92-459

No. 92-

Supreme Court, U.S.
FILED
SEP 14 1992
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

AQUAFAITH SHIPPING, LTD. and
SEVEN SEAS MARITIME, LTD.,
Petitioners,

v.

EUFEMIA R. JARILLAS, Individually,
as Personal Representative of
the Estate of Leopoldo L. Jarillas, and as
Natural Tutrix of Their Minor Children,
Respondent.

**Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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September 14, 1992

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

89 pp

QUESTIONS PRESENTED

1. Does the federal common law of foreign relations, specifically the act of state doctrine, authorize removal of a state court action as a preemptive federal question notwithstanding the "well pleaded complaint" rule?

2. Can a plaintiff file suit in state court to invalidate an official act of the Government of the Philippines in its own territory and evade federal jurisdiction by omitting from its pleadings the foreign sovereign's essential role in the case?

3. Did the Fifth Circuit err in remanding to state court a suit seeking to invalidate an official act of the Government of the Philippines in its own territory?

4. Did the Fifth Circuit violate this Court's controlling jurisprudence by dismissing a federal declaratory judgment action because of a parallel proceeding in a state court, where the dismissal and remand strip petitioners of access to the fundamental federal maritime doctrine of *forum non conveniens*?

LIST OF INTERESTED PERSONS AND RULE 29.1 NOTATION

The parties to the proceeding below were petitioners—Aquafaith Shipping, Ltd. and Seven Seas Maritime, Ltd. —and respondent, Eufemia R. Jarillas, individually, as personal representative of the Estate of Leopoldo L. Jarillas, and as natural tutrix of their minor children.

Petitioners certify that they have no parent or subsidiary companies to be listed under this Court's Rule 29.1.

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Aquafaith Shipping, Ltd. and Seven Seas Maritime, Ltd., respectfully ask this Court to grant certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in consolidated civil proceedings on June 24, 1992.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit, which is reported at 963 F.2d 806, is reprinted in the appendix hereto, pp. 1a-7a, *infra*.

The minute entries and judgments of the United States District Court for the Eastern District of Louisiana that

were the subject of the appeal are unpublished and are likewise reprinted in the appendix at 8a-19a, *infra*.

JURISDICTION

Respondent Eufemia R. Jarillas filed suit on August 30, 1989 in the 29th Judicial District Court, Parish of St. Charles, State of Louisiana, alleging claims under the Jones Act and the general maritime law of the United States resulting from the death of her husband, a Filipino seaman, aboard a foreign flag vessel on the High Seas (Appendix, 22a-32a). Respondent additionally sought to invalidate a prior settlement of her claims and to recover punitive damages against petitioners on allegations of duress, deception, and coercion in signing the release. *Id.* Respondent's "Receipt and Release" is reprinted in the appendix hereto at 33a-37a, *infra*.

Invoking the federal removal statute, 28 U.S.C. § 1441, and federal question jurisdiction, 28 U.S.C. § 1331, petitioners removed respondent's state court lawsuit on September 11, 1989 to the United States District Court for the Eastern District of Louisiana (Appendix, 38a-40a). On the same day, petitioners filed a complaint for declaratory relief in federal district court, invoking federal question jurisdiction under 28 U.S.C. § 1331, as well as admiralty jurisdiction under 28 U.S.C. § 1333 (Appendix, 41a-47a). In an order entered on September 22, 1989, the district court consolidated respondent's removed action and petitioners' declaratory judgment action.

In a minute entry entered on September 14, 1990 (Appendix, 10a-12a), the district court denied respondent's motions to dismiss and remand. By minute entry entered on March 14, 1991 (Appendix 13a-19a), after considering the criteria established by this Court in *Brillhart v. Excess Insurance Co.*, 316 U.S. 491 (1942), the district court maintained its jurisdiction over the declaratory judgment action and the removed action and dismissed

them on *forum non conveniens* grounds in favor of a proceeding in the Philippines. In accordance with that order, the court thereafter rendered judgments entered on March 29, 1991, dismissing the consolidated actions (Appendix, 8a-9a).

On April 15, 1991, respondent filed a notice of appeal under 28 U.S.C. § 1291. The United States Court of Appeals for the Fifth Circuit rendered its judgment on June 24, 1992, reversing the district court's judgment. Both the removed action and the suit for declaratory judgment were remanded to the district court with instructions to remand respondent's suit to state court and to dismiss the petitioners' declaratory judgment action (Appendix, 1a-7a). After obtaining an extension of time, petitioners timely filed a petition for rehearing and a suggestion for rehearing *en banc* on July 22, 1992. The court of appeals denied both requests on August 6, 1992 (Appendix, 20a-21a).

On August 7, 1992, petitioners filed a motion to stay the mandate of the Fifth Circuit's judgment in order to prepare and file this petition for a writ of certiorari in this Court before September 17, 1992. On August 19, 1992, the Fifth Circuit granted a stay, and petitioners now invoke the jurisdiction of this Court under 28 U.S.C. § 1254(1), having filed their petition according to the conditions of the Fifth Circuit's order and within the time period provided by 28 U.S.C. § 2101(c) and this Court's Rule 13.1.

STATUTES INVOLVED

The following provisions of the Constitution of the United States are implicated in this case: U.S. Const. art. I, § 8, cls. 3 and 10; art. III, § 2, cl. 1; and art. VI, cl. 2 (the Supremacy Clause). The following federal statutes are likewise implicated: (1) 28 U.S.C. § 1331; (2) 28 U.S.C. § 1333; (3) 28 U.S.C. § 1441(a), (b), and (c); and (4) 28 U.S.C. §§ 2201-2202. This case further im-

plicates the following state statute: La. Code Civ. Proc. art. 123. The full texts of these provisions are set forth in the appendix, 61a-65a.

STATEMENT OF THE CASE

A. Preface

This case raises important federal questions under the act of state doctrine, the removal statute, the declaratory judgment statute, and the maritime doctrine of *forum non conveniens* that warrant this Court's review. The issues presented affect the public rights of foreign nations and their citizens, as well as the private rights of these litigants as defined by their own government. A citizen of the Republic of the Philippines has filed suit in Louisiana state court to invalidate a death claim settlement, while neglecting to plead that the settlement was executed in the Philippines and expressly approved through an official public act of an agency of the Philippine Government exercising its authority in its own territory and according to its own law. Relying on the "well pleaded complaint" rule, the Fifth Circuit reversed the district court's express holding that plaintiff could not avoid the federal "act of state" doctrine and federal removal jurisdiction by omitting these crucial details from her state court petition. Thus, this case questions whether the federal common law of foreign relations, specifically the act of state doctrine, completely preempts state law and authorizes removal under federal question jurisdiction notwithstanding the "well pleaded complaint" rule. It likewise questions whether a plaintiff can evade federal jurisdiction by neglecting, through artful pleading, to mention the Philippine Government's official approval of the settlement she is asking the state court to nullify.

This petition further raises far-reaching questions concerning the scope of federal declaratory judgment actions and the uniformity of federal maritime law, particularly the application of the doctrine of *forum non conveniens*.

The district court maintained jurisdiction over petitioners' parallel declaratory judgment action to uphold the settlement agreement, consolidating it with the removal action and dismissing the case under the maritime doctrine of *forum non conveniens*. The district court recognized that petitioners' right to assert the federal maritime doctrine of *forum non conveniens* would be denied by the Louisiana state courts pursuant to a state statute.[1] However, the Fifth Circuit reversed, reasoning that the *forum non conveniens* question could be litigated in state court, despite express state law to the contrary. In so holding, the Fifth Circuit usurped the district court's discretion in deciding whether to entertain declaratory judgment actions and ignored this Court's *Brillhart* mandate, which supports the district court's action in this case. In view of the important federal questions presented, including the impact of this case on United States foreign relations law, petitioners submit that this Court should grant a writ of certiorari.

B. The District Court Proceedings

Respondent is the widow of Leopoldo Jarillas, who was employed as a seaman on board the M/V ALFA, a Cypriot flag vessel. Petitioner Aquafaith, a Cypriot corporation, is the owner of the vessel. Petitioner Seven Seas, a British corporation, is the vessel operator's London agent. On November 16, 1988, the ALFA was involved in a collision in the Baltic Sea. Leopoldo Jarillas disappeared and is now presumed dead.

Decedent was a citizen and resident of the Philippines, as are his wife and children. He was employed aboard

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[1] La. Code Civ. P. art. 123 (Appendix, 65a); *Miller v. American Dredging Co.*, 595 So.2d 615 (La. 1992). A separate petition for certiorari challenging Louisiana's defiant refusal to apply *forum non conveniens* in state-filed maritime cases is now pending in this Court in the matter entitled *American Dredging Co. v. Miller*, No. 91-1950, 60 U.S.L.W. 3844 (U.S. May 29, 1992). Petitioners respectfully suggest that this Court should grant writs in this case as well as in *Miller* to address this recurring issue and to correct Louisiana's aberration on the uniformity of maritime law.

the ALFA under a standard form contract of the Philippine Overseas Employment Administration ("POEA"), which he executed in the Philippines on July 7, 1988. His contract expressly provided that the POEA and the Philippine Courts of Justice would have exclusive jurisdiction over all disputes arising out of the contract. In accordance with Philippine law, decedent's employment contract was filed with and approved by the POEA.

The POEA, an agency of the Philippine government, is charged with overseeing the employment of Filipinos by foreign entities. Two of its functions are to establish the compensation owed by the employer in the case of injury to or death of a Filipino seaman and to advise and protect the interests of Filipino employees or their survivors concerning serious employment-related issues. In addition to authorizing the standard form contract for the employment of seamen, the POEA reviews the settlement of claims by Filipino seamen/employees in the Philippines and determines whether to approve them.

In January 1989, a representative of petitioners approached respondent and advised her that they were prepared to settle any claims arising from the death of her husband by paying an amount greater than the benefits required under the POEA contract, rules, and regulations. On January 9, 1989, respondent, accompanied by her uncle and an attorney representing petitioners, appeared in the POEA offices in Metro Manila before Maria Lourdes Cortez, a Senior Overseas Employment Officer of the POEA. Respondent voluntarily agreed to settle all claims for the sum of P220,000 Philippine pesos. Because POEA regulations and the approved contract required a death benefit of P170,000, the agreed upon sum was P50,000 above the legally mandated death benefits. The settlement released petitioners and anyone else connected with the M/V ALFA from any further potential liability arising from the death of seaman Jarillas. This agreement was memorialized in a written receipt and release signed by respondent (Appendix, 33a-37a).

As part of the receipt and release, Mrs. Jarillas responded to several questions in her own handwriting. She acknowledged: (1) that she had read the settlement papers; (2) that she understood she was signing a receipt and release; (3) that she understood that signing the release settled all claims arising out of the death of her husband; and (4) that she had received 220,000 Philippine pesos in settlement of all claims (Appendix, 34a-35a). Her signature was notarized by the Notary Public of the POEA and was witnessed and accepted for filing by Maria Lourdes Cortez, in her capacity as the Overseas Employment Officer of the POEA. *Id.*

Jose S. Brillantes, the Philippine Government Labor Attache to the United States and the official POEA representative in the United States, testified by deposition in this case that the POEA is a governmental agency under the Department of Labor of the Philippines that has several functions, including promoting the overseas employment of Philippine workers and protecting such workers' interests. It has established rules and regulations for the employment of Philippine workers and insures that the contract of employment between the foreign employer and the worker conforms to minimum POEA standards. It adjudicates disputes between Philippine workers and their overseas employers and assists seamen in resolving and settling claims with their employers. He testified that the signature of the Senior Overseas Employment Officer of the POEA and the filing of the document with the POEA constituted the POEA's approval of the receipt and release. Any claim concerning the validity of the receipt and release would fall within the original and exclusive jurisdiction of the POEA. Furthermore, the POEA regards any foreign court's consideration of a claim brought by a Philippine worker against his foreign employer as undermining the POEA's execution of the Philippine government's policy.

In this particular case, the POEA has officially declared and confirmed that the death compensation of Leopoldo

Jarillas was paid to his surviving spouse, Eufemia Jarillas, on January 9, 1989 before Lourdes M. Cortez, Senior Overseas Employment Officer of the Welfare and Employment Office of the POEA, and that the copy of the worldwide receipt and release executed by Mrs. Eufemia Jarillas is on file with the POEA. *See* sworn statement of Crescencio M. Siddayao, Deputy Administrator for Employment and Welfare, reprinted at 48a-51a, below. As part of its function to conciliate the claims of seamen and their beneficiaries against their employers and agents, the POEA considers such a settlement agreed upon before a POEA officer to be valid and binding. *Id.* Mr. Siddayao declares, "As far as this Administration [the POEA] is concerned, the settlement of the case of A/B Jarillas before the WEO [the Welfare and Employment Office of the POEA] is considered closed and terminated." *Id.* Mr. Siddayao further notes that in Executive Order No. 247, which is entitled "Reorganizing the Philippine Overseas Employment Administration and For Other Purposes," Corazon C. Aquino, then President of the Philippines, ordered the POEA to exercise original and exclusive jurisdiction to hear claims arising out of the employer-employee relationship involving overseas Filipino workers. *Id.* Executive Order No. 247 attached to the Siddayao affidavit is reprinted in the appendix hereto, at 54a-60a, *infra.*

Despite her Philippine government approved settlement, Mrs. Jarillas retained Louisiana counsel and brought suit on August 30, 1989 in Louisiana state court (Appendix, 22a-32a). In addition to asserting claims under the Jones Act and the General Maritime Law, she separately alleged that the settlement she had confected with petitioners was invalid and that she was entitled to punitive damages because of defendants' alleged misconduct in coercing her into the settlement. *Id.*

Petitioners removed respondent's state court action to federal court under 28 U.S.C. § 1441(b) and (c), as-

serting "federal question" jurisdiction (28 U.S.C. § 1331) (Appendix, 38a-40a). Respondent was not simply filing a Jones Act and general maritime law claim under the "saving to suitors" clause. Rather, she was mounting an independent attack on the official public act of a foreign sovereign government by challenging the validity of her prior settlement executed in the Philippines under the authority and approval of the Philippine Government. Thus, the attempted settlement annulment and punitive damage claims are independent claims governed by the federal common law of foreign relations—in particular, the "act of state" doctrine—and present a separate and independent federal question supporting removal. Petitioners also filed a declaratory judgment action based on federal question and admiralty jurisdiction, seeking a declaration that the Philippine settlement was valid and that it precluded respondent from bringing her state court action (Appendix, 41a-47a). The district court consolidated the two actions.

Respondent filed motions to dismiss the declaratory judgment action and to remand the removed action, alleging that the district court lacked subject-matter jurisdiction. In opposition, petitioners produced the foregoing evidence establishing, *inter alia*, that the Philippine Government closely regulated the employment of Filipino seamen and the settlement of their claims and that the respondent's government approved settlement consummated in the Philippines under the authority of the POEA was final and binding under Philippine law.

The district court denied respondent's motions, finding that her claims to invalidate the release and for punitive damages were separate and independent from the wrongful death claims (Appendix, 10a-12a). Because the claims concerning the settlement required the court to review the regulatory process and official acts of a foreign government within its own territory, they invoked federal jurisdiction and were properly before the court (*id.*).

The district court thereafter dismissed both consolidated actions on grounds of *forum non conveniens*, finding that Philippine law controlled the validity of the release and the employment contract of decedent and that all relevant factors militated in favor of a Philippine forum. The district court conditioned its dismissal on petitioners' appearance and cooperation in the appropriate Philippine forum. (Appendix, 13a-19a).

C. Proceedings Before the Fifth Circuit

On respondent's appeal from the district court's judgments, the Fifth Circuit reversed and remanded. *Aquafaith Shipping, Ltd. v. Jarillas*, 963 F.2d 806 (5th Cir. 1992), reprinted at 1a-7a, below. The appellate court vacated the *forum non conveniens* dismissal and ordered the district court to remand the removed action to state court and to dismiss the declaratory judgment action (Appendix, 6a-7a).

Without reaching petitioners' arguments based on the federal common law of foreign relations and the act of state doctrine, the court of appeals concluded that the "well pleaded complaint" rule barred removal of the state court action, because respondent's original petition failed to state that the Philippine Government had approved the settlement. According to the Fifth Circuit, respondent's pleadings in state court had invoked no federal question, and petitioners alone had raised federal law as a matter of defense. (Appendix, at 4a-6a).

Upon concluding that the case should have been remanded to state court, the court of appeals next held that the district court should have dismissed petitioners' declaratory judgment action. Citing this Court's opinion in *Brillhart v. Excess Insurance Co.*, 316 U.S. 491 (1942), the Fifth Circuit concluded that allowing the federal court action to continue would interfere with a parallel action in a state court that was capable of resolving the dispute.

The Fifth Circuit further observed, "The state court might not apply the same doctrine of *forum non conveniens* as a federal court would, but this possibility does not change our result." *Id.*, at 6a.

REASONS FOR GRANTING THE WRIT

I. THE FIFTH CIRCUIT'S DECISION DIRECTLY CONTRAVENES THIS COURT'S JURISPRUDENCE ESTABLISHING THE COMPLETE PREEMPTION OF THE FEDERAL ACT OF STATE DOCTRINE

A. The Federal Act of State Doctrine Raises a Preemptive Federal Question That Authorizes Federal Question Removal Jurisdiction Notwithstanding the "Well Pleaded Complaint" Rule

In *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964), this Court held that the federal common law of foreign relations, in particular, the "act of state doctrine," completely preempts state law. According to this centuries old doctrine, as defined in *Underhill v. Hernandez*, 168 U.S. 250, 252 (1897),

> Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory.

As this Court observed in *Sabbatino*, the act of state doctrine has " 'constitutional' underpinnings." 376 U.S. at 423. "[T]he problems involved are uniquely federal in nature," and "the scope of the act of state doctrine *must be determined according to federal law.*" 376 U.S. at 424 and 427 (emphasis added). Among the constitutional provisions this Court cited in *Sabbatino* in support of this doctrine and this country's "desire to give matters of international significance to the jurisdiction of federal institutions" are U.S. Const., art I, § 8, cls. 3 and 10 and art. III, § 2, reprinted in the appendix hereto at 61a.

As a matter of paramount federal international relations law, the act of state doctrine prohibits all courts in the United States from questioning the validity of an act of a foreign government undertaken within its own territory. The Fifth Circuit's opinion in this case eviscerates this Court's complete "preemption" exception and subverts federal international relations policy by allowing private litigants to file suit in a state court to collaterally attack a release executed in a foreign nation and officially approved and filed by the public act of a foreign governmental agency in the exercise of its governmental authority.

In holding that the "well pleaded complaint" rule foreclosed petitioners from removing this case, the Fifth Circuit further misapplied the law and reached a result directly contrary to decisions of this Court and other circuit courts. The allegations of a plaintiff's compaint *do not govern* when the controlling federal law *raised as a defense* completely supplants state law and forms the basis for removal judisdiction. *E.g., Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987); *Van Camp v. AT&T Information Systems*, 963 F.2d 119 (6th Cir. 1992); *Deford v. Soo Line Railroad Co.*, 867 F.2d 1080, 1084 (8th Cir.), *cert. denied*, 492 U.S. 927 (1989).

In *Caterpillar*, this Court found that even though a federal defense usually does not support removal, such is not the case where "the preemptive force of a statute is so 'extraordinary' that it 'converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well pleaded complaint rule.'" *Id.*, 482 U.S. at 393, *quoting Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58, 65, 107 S.Ct. 1542, 95 L.Ed.2d 55 (1987).

In *Van Camp*, plaintiff's complaint alleged sex and age discrimination claims under state law and made no mention of any federal claim. 963 F.2d at 120-21. AT&T

removed, asserting that plaintiff's purported state claims were exclusively governed by ERISA. The Sixth Circuit agreed that removal was proper: "When this exception to the well-pleaded complaint rule—the 'complete-preemption doctrine'—applies, a complaint, though on its face setting forth a claim under state law, is, for the purposes of removal, treated as a federal claim because federal law displaces any right of action under state law." 963 F.2d at 122. Similarly, in *Deford*, the Eighth Circuit found that the "complete preemption" exception "prohibits a plaintiff from defeating removal by failing to plead necessary federal questions in a complaint and allows a defense of federal preemption as a basis for removal." 867 F.2d at 1084.

Thus, jurisprudence from this Court and the federal circuits has firmly established that, where "complete preemption" is involved, the federal court *must* look beyond the allegations of the state court complaint. Plaintiffs cannot hide behind their incomplete state court allegations. Otherwise, the "complete preemption exception" would be no exception at all, as plaintiffs could always subvert important federal law and paramount federal policy by "artfully" omitting crucial facts to disguise the nature of their claims. *See also* Wright, Miller & Cooper, FEDERAL PRACTICE AND PROCEDURE § 3722 at 276 (1985), noting that "the plaintiff's failure to make specific reference in the complaint to a source of federal law that clearly is applicable will not prevent removal."

Furthermore, the "complete preemption doctrine" is not limited to Congressional statutory enactments. The "federal common law" likewise can completely preempt so as to provide a basis for removal. In *Illinois v. City of Milwaukee*, 406 U.S. 91 (1972), this Court held that the "federal common law" regarding pollution of interstate waterways completely preempted state law and supported federal question jurisdiction under 28 U.S.C. § 1331. 406 U.S. at 99-100, 107 n.9. Citing to *Illinois v. Milwaukee*,

other federal courts have held that "federal common law" is completely preemptive and provides a basis for federal question jurisdiction so as to support removal. *E.g., Madsen v. Prudential Federal Savings & Loan Ass'n*, 635 F.2d 797, 802 (10th Cir. 1980), *cert. denied*, 451 U.S. 1018 (1981); *Fisher v. White*, 715 F.Supp. 37, 40 (E.D.N.Y. 1989).

This case falls squarely within the federal common law of foreign relations and the act of state doctrine, which are fields preempted by federal law. Accordingly, under this Court's jurisprudence, this case was removable to federal court notwithstanding the "well pleaded complaint" rule. This Court should grant a writ to reconcile the Fifth Circuit's decision that incorrectly remanded this case contrary to the prevailing jurisprudence of this and other federal courts. Unless reconciled, the Fifth Circuit's opinion will lead to further distortions in an area where federal courts must speak with one voice.

B. A Plaintiff Suing in State Court to Set Aside a Valid Settlement Officially Approved by the Government of the Philippines in Its Own Territory Cannot Evade Federal Question Jurisdiction and the Act of State Doctrine by Artful Pleading

This Court has repeatedly recognized that "it is an independent corollary of the well pleaded complaint rule that a plaintiff may not defeat removal by omitting to plead necessary federal questions in a complaint. . . ." *Franchise Tax Board of the State of California v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1, 22 (1983), *Christianson v. Colt Industries*, 486 U.S. 800, 809 n.3 (1988); *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n.2 (1981).

This is not a case involving purely private interests where a plaintiff has simply filed a Jones Act claim in state court under the "saving to suitors" clause and where the defendant is first to mention a prior settlement by

way of defense to the claim. On the contrary, Mrs. Jarillas, a Philippine citizen, affirmatively asked the state court in her petition to nullify her Philippine Government-authorized and approved settlement. In so pleading, she necessarily challenged her own government's official public act within its own sovereign territory and raised a federal question of United States foreign relations law. To invalidate that settlement, she necessarily must confront the federal act of state doctrine and cannot evade that inescapable fact by neglecting to plead that she entered into the settlement in the Philippines under the auspices of the government of that sovereign nation. Had respondent pleaded all the essential facts relevant to her claim overtly challenging the prior settlement, including that the agreement was confected in the Philippines with the public approval of an officer of the Philippine Government, her state court claim clearly would have invoked the federal common law of foreign relations and the "act of state" doctrine—areas of federal law that completely preempt the field.

The Fifth Circuit's reliance on the "well pleaded complaint rule" to shield plaintiff's complaint from federal jurisdiction under the federal act of state doctrine condones plaintiff's artful pleading and conflicts with this Court's jurisprudence and that of other federal courts discussed above. This Court has mandated that federal courts must look behind a plaintiff's artful, incomplete allegations and consider the defendant's jurisdictional allegations that the plaintiff "conveniently" has failed to allege. The state court pleadings in other "complete preemption" cases, such as *Van Camp* and *Deford*, discussed above, no more alleged federal claims than did the petition filed in state court in this case. Nevertheless, those courts correctly looked behind plaintiffs' state court allegations to find federal jurisdiction based on defensive allegations of preemption. The district court in the instant case did no more. As the district court in this case

correctly recognized, the foreign policy implications of this case provide even a greater basis for refusing to allow a plaintiff to artfully evade preemptive federal law and removal jurisdiction.

If allowed to stand, the decision below authorizes litigants to evade federal jurisdiction and important questions of public policy merely by refusing to plead the factual details that invoke important federal interests. This Court should grant a writ to reconcile the Fifth Circuit's erroneous decision with federal law as previously established by this Court.

II. THE FIFTH CIRCUIT'S DISMISSAL OF PETITIONERS' PARALLEL FEDERAL DECLARATORY JUDGMENT ACTION CONTRAVENES THIS COURT'S MANDATE TO MAINTAIN SUCH ACTIONS WHERE STATE COURTS HAVE REFUSED TO PROTECT A PARTY'S FEDERAL RIGHTS

The Fifth Circuit's further error in dismissing petitioners' federal declaratory judgment action furnishes equally compelling reasons for granting a writ in this case. First, the appellate court dismissal undermines this Court's decisions in *Brillhart v. Excess Insurance Co.*, 316 U.S. 491 (1942), *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102 (1968), and *Will v. Calvert Fire Insurance Co.*, 437 U.S. 655 (1978)—jurisprudence vesting discretion in the district courts to entertain declaratory judgment actions. Second, the appellate court has stripped petitioners of an essential maritime legal right by relegating them to a state forum that defiantly refuses to recognize the fundamental maritime doctrine of *forum non conveniens*. Third, the dismissal destroys the uniformity of maritime law.

A. The Fifth Circuit's Dismissal Usurps the District Court's Discretion and Contravenes the Standards of *Brillhart v. Excess Insurance Co.* and Subsequent Decisions of this Court

Petitioners filed a federal declaratory judgment action based on federal question and admiralty jurisdiction, seeking a declaration that the receipt and release approved by the Government of the Philippines was binding and precluded respondent's Jones Act and general maritime law action. The district court, after considering whether it should maintain this action under the criteria enunciated in *Brillhart*, maintained its jurisdiction to dismiss on grounds of *forum non conveniens*, noting that the Philippines was the proper forum for this litigation (Appendix, 13a-19a). The Fifth Circuit, after holding that Mrs. Jarillas' lawsuit should be remanded to state court, held that the *forum non conveniens* dismissal should be vacated and that the declaratory judgment should also be dismissed because "it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit." Appendix, 6a, quoting *Brillhart*, 316 U.S. at 495. In so holding, the Fifth Circuit misapplied *Brillhart*, *Will*, and *Patterson* by relegating these defendants to a state forum that has conclusively refused to apply the maritime doctrine of *forum non conveniens*. By stripping petitioners of their fundamental federal maritime rights, the Fifth Circuit has both misapplied *Brillhart*, as well as a long line of Supreme Court jurisprudence recognizing that *forum non conveniens* is a characteristic feature of maritime law that is available to all litigants in all cases, whether in state or federal court.

The Fifth Circuit correctly noted that *Brillhart* ordinarily requires a federal court to dismiss a declaratory judgment action where it seeks to adjudicate matters that are already being litigated in a parallel state court proceeding. Nevertheless, this Court also held that a dismis-

sal is not proper in every case. *Brillhart* instructs federal courts to refuse jurisdiction over declaratory judgment actions only where the questions at issue in the case can "better be settled" in the state court proceeding. On the other hand, where the state proceeding is deficient in resolving the claims, or where the state court cannot or will not protect a litigant's federal rights, the federal declaratory judgment action should not be dismissed:

> Where a district court is presented with a claim such as was made here, it should ascertain whether the questions in controversy between the parties to the federal suit, and which are not foreclosed under the applicable substantive law, can better be settled in the proceeding pending in the state court. *This may entail inquiry into the scope of the pending state court proceeding and the nature of defenses open there.* The federal court may have to consider whether the claims of all parties in interest can satisfactorily be adjudicated in that proceeding, whether necessary parties have been joined, whether such parties are amenable to process in that proceeding, etc.

316 U.S. at 495 (emphasis supplied).

In *Brillhart*, this Court ordered remand of the dismissal of the declaratory judgment action to the district court, because the district court had failed to consider whether defenses raised in that proceeding could be considered in the state forum. 316 U.S. at 495-96. Significantly, this Court vacated the circuit court's reversal of the district court's original dismissal of the declaratory judgment action, stating that this determination was within the province of the district court, not the court of appeals. Since *Brillhart*, this Court has again held that whether a declaratory judgment action should be maintained is subject to the district court's discretion, which should not ordinarily be disturbed on appeal. See *Will v. Calvert Fire Insurance Co.*, 437 U.S. at 662-64, and *Provident*

Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. at 126-27.

The Fifth Circuit's dismissal of the declaratory judgment action in this case directly contravenes *Brillhart*, *Will*, and *Patterson*. First, the circuit court summarily ordered dismissal of the declaratory judgment action without considering, as *Brillhart* demands, whether Aquafaith will receive a fair adjudication of its federal maritime defenses in the state court litigation. Contrary to the Fifth Circuit's finding,[2] the state court's potential treatment of Aquafaith's federal maritime *forum non conveniens* defense is not insignificant, but is, as discussed below, a dispositive *Brillhart* factor that requires the court to maintain jurisdiction over the declaratory judgment action; Louisiana has statutorily and jurisprudentially barred any and all consideration of this fundamental maritime doctrine. Second, in *Will v. Calvert Fire Insurance Co.*, cited above, this Court held that the *Brillhart* analysis is a question for the district court, whose decision should not be reversed absent an abuse of discretion. This district court in this case has exercised its discretion in maintaining jurisdiction over this declaratory judgment action by expressly considering, in light of *Brillhart*, that the state court would deprive petitioners of this fundamental maritime right (Appendix, 16a-18a). Given the unavailability of the federal maritime *forum non conveniens* doctrine in state court, the appellate court violated *Brillhart* and its progeny by substituting its own arbitrary analysis for the reasoned exercise of discretion by the district court.

The Fifth Circuit's summary dismissal without analysis substantially undermines the *Brillhart* rule. It abridges the discretion that this Court has vested in the district

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[2] The panel held: "The state court might not apply the same doctrine of forum non conveniens as a federal court would, but this possibility does not change our result." (Appendix, 6a).

courts and authorizes appellate courts to substitute their own *ad hoc* analysis, notwithstanding the well-reasoned basis of a district court's exercise of discretion. It authorizes federal courts to ignore a state's refusal to protect a litigant's federal rights, a factor that *Brillhart* expressly commands that the federal trial and appellate courts consider. This Court should grant a writ to reconcile the decision below with *Brillhart* and its progeny.

B. Petitioners Have Been Stripped of a Fundamental Defense by Louisiana's Refusal to Recognize the Doctrine of *Forum Non Conveniens* in Maritime Cases

Furthermore, *Brillhart* recognizes the propriety of a federal declaratory judgment action where a defendant will lose important federal defenses if the party is relegated to state court. *Brillhart*, 316 U.S. at 495. By dismissing petitioners' federal declaratory judgment action, the Fifth Circuit has stripped petitioners of their right to assert the fundamental maritime doctrine of *forum non conveniens*.

In maritime actions between foreigners, this Court has long recognized the discretion of admiralty courts to refuse to exercise jurisdiction where the case has little or no substantive contact with the United States and where the litigation could be conducted more appropriately in a different court. *The Belgenland*, 114 U.S. 355 (1885); *Canada Malting Co. v. Paterson Co.*, 285 U.S. 413 (1932). In later cases, this Court applied the doctrine to actions at law and formulated a set of public and private interest factors to be considered in dismissing a case filed in the United States in favor of a proceeding in a foreign forum. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947); *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981). "[D]ismissal will ordinarily be appropriate where trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable

to offer any specific reasons of convenience supporting his choice." *Piper*, 454 U.S. at 249. The doctrine "is designed in part to help courts avoid conducting complex exercises in comparative law." 464 U.S. at 251.

Nonetheless, despite the preeminence of *forum non conveniens* as a characteristic feature of maritime law, Louisiana has defiantly refused to apply it in maritime cases. Article 123(C) of the La. Code of Civ. Proc., reproduced in the appendix hereto at 65a, expressly denies the defense of *forum non conveniens* to maritime defendants. Furthermore, the Louisiana Supreme Court has held that the statute clearly means "that the doctrine of *forum non conveniens* is specifically made unavailable in a Jones Act or maritime case" and that "application of Louisiana's *forum non conveniens* rule *is not preempted by federal admiralty law*." *Miller v American Dredging Co.*, 595 So.2d 615, 617, 619 (La. 1992) (emphasis added). The result is that maritime defendants in Louisiana state courts are deprived of their long established federal rights of *forum non conveniens*, even though the dispute has a totally foreign nexus, foreign law governs the controversy, and all the public and private interest factors favor dismissal.[3]

Brillhart and its progeny teach that a federal declaratory judgment action should be maintained—or at the

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[3] In this case, the district court specifically found that the decedent's POEA contract, which was executed in the Philippines, "expressly provided that the POEA and the Philippine Courts of Justice have exclusive jurisdiction over all disputes arising out of the employment relationship, which contract was filed with and approved by the POEA." (Appendix, 14a). Exclusive forum selection clauses are valid and enforceable, absent a strong showing that they are fundamentally unfair or unreasonable under the circumstances. *See Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972); *Carnival Cruise Lines v. Shute*, 499 U.S. —, 111 S.Ct. 1522 (1991). Here, respondent has no proof that litigating her claim in her home country of the Philippines under the forum selection clause of a standard, government approved contract will be unfair, unreasonable, or inconvenient.

very least, that the federal district court is the proper court to determine whether the action should be maintained—where a fundamental defense under the applicable substantive law is unavailable and cannot be considered in state court. The district court in this case made the *Brillhart* determination to maintain its declaratory judgment jurisdiction in light of the unavailability of this fundamental maritime right in Louisiana courts. The Fifth Circuit in this case has usurped the district court's prerogative and has provided the basis for other courts to follow suit.

C. The Fifth Circuit's Order Remanding This Maritime Cause of Action to the Court of A State That Statutorily Denies Application of the Doctrine of *Forum Non Conveniens* Destroys the Uniformity of Federal Maritime Law

Furthermore, the Fifth Circuit's decision violates the uniformity of federal maritime law by relegating these maritime litigants to a state forum that statutorily denies *forum non conveniens* dismissals in maritime cases.

When a Jones Act or maritime claim is filed in state court, Article III, § 2 of the United States Constitution mandates that federal maritime law, not state law, governs the course of the lawsuit in the state forum. *Garrett v. Moore-McCormack Co., Inc.*, 317 U.S. 239 (1942); *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 628 (1959); *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 409 (1953); *Panama Railroad Co. v. Johnson*, 264 U.S. 375, 385-89 (1924). As this Court extensively explained in *Johnson*, the U.S. Constitution vests the federal government with the exclusive power regarding federal maritime law so as to guarantee its uniform application in its "substantive as well as its procedural features." 264 U.S. at 385-89; *see also Hawn*, 346 U.S. at 409. Furthermore, the Supremacy Clause, U.S. Const., art VI, cl. 2, guarantees that the maritime law, like all other federal law, "shall be the supreme law of the land."

The doctrine of *forum non conveniens* is a fundamental feature of federal maritime law; it has been recognized in the landmark cases of this Court cited above and repeatedly applied in modern maritime cases. *See Ikospentakis v. Thalassic Steamship Agency*, 915 F.2d 176 (5th Cir. 1990); *Maria Victoria Naviera, S.A. v. Cementos Del Valle, S.A.*, 759 F.2d 1027 (2d Cir. 1985); *Zipfel v. Haliburton Co.*, 832 F.2d 1477 (9th Cir. 1987), *cert. denied*, 486 U.S. 1054 (1988); *Singalas v. Lido Maritime, Inc.*, 776 F.2d 1512 (11th Cir. 1985). Federal jurisprudence recognizes this doctrine as an integral part of the maritime law and as the supreme law of the land in maritime cases. *See Ikospentakis v. Thalassic Steamship Agency*, cited above; *Camejo v. Ocean Drilling & Exploration*, 838 F.2d 1374 (5th Cir. 1988). See also *Chick Kam Choo v. Exxon*, 486 U.S. 140 (1988) (stating that the Fifth Circuit's view of the "preemptive force of federal maritime *forum non conveniens*" may in fact be a correct statement of the law). Federal and state courts must consistently apply *forum non conveniens* to maintain uniformity in federal maritime law.

As noted above, Louisiana statutory law, as definitively interpreted by the Louisiana Supreme Court, denies application of *forum non conveniens* in maritime cases. This result contravenes the federal jurisprudence cited above, which mandates all courts, federal and state alike, to apply the fundamental doctrine of *forum non conveniens*. By dismissing petitioners' declaratory judgment and relegating them to a state forum that defiantly refuses to recognize this doctrine, the Fifth Circuit has destroyed the uniformity of maritime law.

Furthermore, if left uncorrected, the Fifth Circuit's decision invites all foreign maritime litigants to avoid the uniform application of federal maritime law, as well as the law of their own sovereign governments, by filing their maritime actions in the courts of a state like Louisiana that refuses to abide by this fundamental maritime

doctrine. Louisiana, and other states like it, will become a world forum for unrelated actions with no connexity to the United States, and maritime litigants will be denied an essential right that has been a characteristic feature of federal maritime law since its inception. As this Court has recognized in *Piper*, if litigants are allowed to shop for favorable law without regard to the doctrine of *forum non conveniens*,

> American courts, which are already extremely attractive to foreign plaintiffs, would become even more attractive. The flow of litigation into the United States would increase and further congest already crowded courts.

454 U.S. at 252.

In short, allowing the decision in this case to stand will violate the fundamental federal maritime policy behind the *forum non conveniens* doctrine: Actions with no relation to the U.S. should be heard conveniently by courts of the nation with the most interest. Unless this Court intercedes, the decision below will create a profound distortion in the established system of resolving maritime disputes, will encourage conflicts in maritime law, and will work a grave injustice on litigants and courts worldwide.

This Court should grant a writ to reconcile the Fifth Circuit's decision in this case with *Brillhart*, to rectify the Fifth Circuit's error that deprives petitioners of a fundamental maritime doctrine if their declaratory judgment action is dismissed, and to confront Louisiana's refusal to recognize the supremacy and uniformity of federal maritime law.

CONCLUSION

The Fifth Circuit's decision in this case contravenes this Court's jurisprudence and settled federal law in the areas of foreign relations and the act of state doctrine, removal jurisdiction, declaratory judgments, and the maritime doctrine of *forum non conveniens*. For the reasons set forth above, petitioners submit that the Court should grant a writ of certiorari to address these important issues of international concern.

Respectfully submitted,

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September 14, 1992

APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-3346

AQUAFAITH SHIPPING, LTD., and
SEVEN SEAS MARITIME, LTD.,
Plaintiffs-Appellees,

versus

EUFEMIA R. JARILLAS,
Individually, as personal representative of the estate of
LEOPOLDO L. JARILLAS, ETC.,
Defendant-Appellant.

Appeals from the United States District Court
for the Eastern District of Louisiana

(June 24, 1992)

Before POLITZ, Chief Judge, WILLIAMS and DUHÉ, Circuit Judges.

DUHÉ, Circuit Judge:

This case requires us to decide whether the petition filed in state court contains a removable claim or cause of action separate and independent from a Jones Act claim. We hold that the petition states no removable claim or cause of action and therefore reverse the judg-

ment of the district court. We also hold that the district court should have dismissed the declaratory judgment action because the federal action is identical to the previously filed state court case.

I.

This litigation started when Eufemia R. Jarillas, a Philippine domiciliary, filed a Petition for Damages and for Writ of Attachment in Louisiana state court. She is suing Aquafaith Shipping, Ltd. and Seven Seas Maritime, Ltd. (Cypriot and British corporations, respectively) under the Jones Act [1] and the general maritime law of the United States, alleging that her husband was killed while employed as a seaman on the M/V Alfa, a vessel owned and operated by those corporations. She also claims that Aquafaith and Seven Seas prevailed upon her, through unlawful overreaching, to settle the claim and release them from liability. She asks for punitive damages to deter them from such conduct in the future. The suit is brought by Mrs. Jarillas individually, as representative of her husband's estate, and as natural tutrix of the couple's minor children.

In response to her petition, Aquafaith and Seven Seas invoked the jurisdiction of the federal district court. They filed a petition for removal and a complaint for declaratory relief. Mrs. Jarillas moved to remand her action to state court and she asked that the district court dismiss the declaratory judgment action. The court held that the release claim is separate and independent from the Jones Act claim, that the release claim is within the jurisdiction of the federal courts because it is governed by the federal common law of foreign relations, and that the whole matter could therefore be removed under 28 U.S.C. § 1441(c). The court denied Mrs. Jarillas's motions to remand and dismiss. It then applied the doctrine

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[1] 46 U.S.C. § 688.

of forum non conveniens and dismissed the entire case in favor of a Philippine forum. Mrs. Jarillas appeals.

II.

We first address the issue of removability. The Jones Act allows a plaintiff to bring her action in state court without fear of removal to federal court. 46 U.S.C. § 688; 28 U.S.C. § 1445(a). Aquafaith and Seven Seas argue that Mrs. Jarillas's release claim is "separate and independent" from her Jones Act claim, that the receipt and release claim is within the jurisdiction conferred by 28 U.S.C. § 1331 (federal question jurisdiction), and that the entire case, including the Jones Act claim, may therefore be removed under 28 U.S.C. § 1441(c). Mrs. Jarillas controverts each of these three contentions.

We need not resolve any "potential conflict between § 1445(a) and § 1441(c)." *In re Dutile*, 935 F.2d 61, 62 (5th Cir. 1991). The removal statute requires that the separate and independent claim be within our federal question jurisdiction. Regardless of whether Mrs. Jarillas's receipt and release claim is separate and independent from her Jones Act claim (a question on which we intimate no opinion), the release claim is not subject to federal question jurisdiction, as far as can be discerned from her state court petition.

Aquafaith and Seven Seas base their contrary contention on the following reasoning. The release signed by Mrs. Jarillas was filed with the Philippine Overseas Employment Administration, which among other things is charged with helping seamen and their families settle claims. Therefore, Aquafaith and Seven Seas conclude, this case will require a court "to pass on the validity of official acts of a foreign sovereign taken within its own territory." Orig. Br. of Appellees at 23. The court would find itself embroiled in the area of international relations, which is exclusively a matter of federal law. The federal courts have fashioned a federal common law to

dispose of cases in this area. *See generally Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964); *Texas Indus. v. Radcliff Materials, Inc.*, 451 U.S. 630 (1981); *Republic of Philippines v. Marcos*, 806 F.2d 344 (2d Cir. 1986). Aquafaith and Seven Seas argue that nothing less than the act-of-state doctrine is involved in this case.

Defense counsel's erudite arguments about the federal common law of foreign relations are foreclosed by the familiar well-pleaded complaint rule. For purposes of jurisdiction, we look only to the properly pleaded complaint or petition. *E.g., Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 9-10 (1983) (citing *Taylor v. Anderson*, 234 U.S. 74, 75-76 (1914)); *Addison v. Gulf Coast Contracting Servs., Inc.*, 744 F.2d 494, 499 (5th Cir. 1984). The court may have to examine pleadings filed by the defendant in order to determine whether the plaintiff's complaint is in fact "well pleaded." Thus, when a court performs its duty to verify that it has jurisdiction, it may be required to survey the entire record, including the defendant's pleadings, and base its ruling on the complaint, on undisputed facts, and on its resolution of disputed facts. *See Williamson v. Tucker*, 645 F.2d 404, 412-13 (5th Cir. May 1981), *cert. denied*, 454 U.S. 897 (1981); *Calvert v. Sharp*, 748 F.2d 861, 862-63 (4th Cir. 1984), *cert. denied*, 471 U.S. 1132 (1985), *overruled on other grounds by West v. Atkins*, 487 U.S. 42 (1988). *See generally* Fed. R. Civ. P. 12 (b)(1). The purpose of this careful survey, however, is to shed light on the plaintiff's pleadings. The court's focus is on the plaintiff's pleadings, not the defendant's.

A federal court is not confined to the letter of the petition. The court may find that the plaintiff's claims arise under federal law, even though the plaintiff has not characterized them as federal claims. Thus, if the petition purports to invoke state law but would actually be governed by federal law because of the *complete* preemption of state law, federal jurisdiction will attach. *Avco Corp.*

v. Aero Lodge No. 735, Int'l Ass'n of Machinists & Aerospace Workers, 390 U.S. 557 (1968). Still, the court draws this conclusion from a close reading of the plaintiff's pleadings, not from defenses raised by the defendant. "A defense that raises a federal question is inadequate to confer federal jurisdiction." *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 808 (1986).

Seven Seas and Aquafaith have not cited any exceptions to the well-pleaded complaint rule, and our research has uncovered only one. Federal officers may "overcome the 'well-pleaded complaint' rule which would otherwise preclude removal even if a federal defense were alleged." *Mesa v. California*, 489 U.S. 121, 136-37 (1989). This exception is provided by a specific jurisdictional statute. *Id.* at 136 (construing 28 U.S.C. § 1442(a)). We have been unable to find any judge-made exceptions, nor are we sure that judges would have the power to create one. One district court in New York referred to the *Avco* holding as an exception,[2] but that holding is not truly an exception. *Avco* requires a court to examine the complaint. The court may reconstruct the plaintiff's legal theories, but the court looks only to the pleadings of the plaintiff.

No matter how closely we scrutinize Mrs. Jarillas's petition, we can find no hint of the federal common law of foreign relations. The complaint does allege that Mrs. Jarillas maintains her domicile in the Philippines, that corporations organized in foreign countries are involved, and that the collision which killed Mr. Jarillas occurred somewhere between New Orleans and the erstwhile Soviet Union. These allegations do not lift this case from the usual scaly context of maritime suits into the rarefied realm of foreign relations. We learn of the involvement

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[2] *International Ass'n of Machinists & Aerospace Workers, Local Lodge No. 967 v. General Elec. Co.*, 713 F. Supp. 547, 551 (N.D.N.Y. 1989).

of the POEA only from the pleadings of Aquafaith and Seven Seas. Without the information that we discover from their pleadings, the act-of-state doctrine and federal common law are not implicated.[3] We hold that Mrs. Jarillas's release claim is not subject to federal question jurisdiction and that her case should have been remanded to state court.

III.

Having concluded that Mrs. Jarillas's case should have been remanded, we also hold that the declaratory judgment action should be dismissed. In the words of Mr. Justice Frankfurter, "it would be uneconomical as well as vexatious for a federal court to proceed in a declaratory judgment suit" when the entire controversy is already being litigated in a state court that is capable of resolving the dispute. *Brillhart v. Excess Ins. Co.*, 316 U.S. 491, 495 (1942). "Gratuitous interference with the orderly and comprehensive disposition of a state court litigation should be avoided." *Id.* While we do not rule in favor of dismissing the federal action solely because the state court suit was filed first, prosecution of the federal action would be useless when the state court is adjudicating the same controversy, and dismissal is therefore appropriate. *See Employers' Liab. Assurance Corp. v. Mitchell*, 211 F.2d 441, 443 (5th Cir.), *cert. denied*, 347 U.S. 1014 (1954). The state court might not apply the same doctrine of forum non conveniens as a federal court would, but this possibility does not change our result.

IV.

For the foregoing reasons, the judgment of the district court is reversed. Both cases are remanded to the United States District Court for the Eastern District of Louisi-

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[3] We express no opinion on whether the federal common law would be implicated if Mrs. Jarillas's pleading had contained all of the allegations included in those of Aquafaith and Seven Seas.

ana, which should remand Mrs. Jarillas's suit for damages to the 29th Judicial District Court, Parish of St. Charles, Louisiana. The declaratory judgment action of Aquafaith and Seven Seas should be dismissed.

REVERSED and REMANDED WITH INSTRUCTIONS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 89-4036

SECTION "A"

EUFEMIA R. JARRILLAS ETC.

Versus

AQUAFAITH SHIPPING LTD. *et al.*

JUDGMENT

(Filed Mar. 29, 1991;
Date of Entry Mar. 29, 1991)

In accordance with the Court's Order entered herein on March 14, 1991, and upon the Court noting that Aquafaith Shipping LTD. and Seven Seas Maritime LTD. have complied with the Court's directive contained in said Order,

IT IS ORDERED, ADJUDGED, AND DECREED, that the claims herein be dismissed with prejudice for forum non conveniens reserving unto Eufemia R. Jarillas petitioning the Court for reopening this matter in the event that the conditions for dismissal are not complied with.

New Orleans, Louisiana, this 29th day of March, 1991.

/s/ Loretta G. Whyte
LORETTA G. WHYTE
Clerk

APPROVED AS TO FORM:

/s/ Charles Schwartz, Jr.
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 89-4037

SECTION "A"

EUFEMIA R. JARRILLAS *etc.*

Versus

AQUAFAITH SHIPPING LTD. *et al.*

JUDGMENT

Filed Mar. 29, 1991;
Date of Entry Mar. 29, 1991)

In accordance with the Court's Order entered herein on March 14, 1991, and upon the Court noting that Aquafaith Shipping LTD. and Seven Seas Maritime LTD. have complied with the Court's directive contained in said **Order,**

IT IS ORDERED, ADJUDGED, AND DECREED, that the claims herein be dismissed with prejudice for forum non conveniens reserving unto Eufemia R. Jarillas petitioning the Court for reopening this matter in the event that the conditions for dismissal are not complied with.

New Orleans, Louisiana, this 29th day of March, 1991.

/s/ Loretta G. Whyte
LORETTA G. WHYTE
Clerk

APPROVED AS TO FORM:

/s/ Charles Schwartz, Jr.
United States District Judge

MINUTE ENTRY
SEPTEMBER 13, 1990
SCHWARTZ, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 89-4036

SECTION "A"

AQUAFAITH SHIPPING, LTD. AND
SEVEN SEAS MARITIME, LTD.

Versus

EUFEMIA R. JARILLAS

CONSOLIDATED WITH
Civil Action No. 89-4037

SECTION "A"

EUFEMIA R. JARILLAS

Versus

AQUAFAITH SHIPPING, LTD. AND
SEVEN SEAS MARITIME, LTD.

(Filed Sep. 13, 1990;
Date of Entry Sep. 14, 1990)

This matter is before the Court on the motions of plaintiff [1] to remand and to dismiss. The motions, set for hearing on September 12, 1990, was taken on briefs without oral argument. For the reasons set forth below, the motions are DENIED.

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[1] For the sake of clarity, Eufemia R. Jarillas will be referred to as "plaintiff," and Aquafaith Shipping, Ltd. and Seven Seas Maritime, Ltd. will be referred to as "defendants."

On November 16, 1988, the M/V ALFA, owned and operated by the defendants, was involved in a collision in the Baltic Sea. Plaintiff's decedent was reported as missing, and is presumed drowned. The decedent, Leopoldo Jarillas, was a Philippine resident. On Jan. 9, 1989, plaintiff entered into a settlement whereby she signed a Receipt and Release in which she released all claims against the defendants arising out of Leopoldo Jarillas' death and received 220,000 Philippine pesos. Plaintiff now claims this agreement was signed under duress and coercion.

The Philippine Overseas Employment Agency ("POEA") is a Philippine government agency. Part of its function is the protection of overseas workers and the resolutions of disputes between an overseas worker and his employer. Defendants claim that the settlement was approved by the POEA, and that under Philippine law, it is a binding settlement.

Plaintiff claims, however, that the agreement is stamped "received" not "approved" by the POEA, and that the agreement was merely filed with that agency after plaintiff signed it. Since this procedure is not required by the POEA, merely filing such documents, does not make them binding under Philippine law.

This case was originally filed on August 30, 1989 in state court. At that time, plaintiff filed a petition for damages and a writ of attachment and alleged a Jones Act claim, a claim of unseaworthiness, and that the release was null and void because it was signed under duress and coercion. On Sept. 11, 1989, defendants filed a removal petition and a complaint for declaratory relief in this Court. Plaintiffs have filed a motion to dismiss the complaint for declaratory judgment and a motion for remand.

First, plaintiff's Jones Act claim and her claim to void the release are clearly separate and independent claims. Although the claim regarding the validity of the settle-

ment agreement is related to the decedent's death, it deals with a separate wrong and seeks to enforce a separate right. *See Hollis v. Halter Marine, Inc.*, 595 F. Supp. 827, 829 (E.D. La. 1984). The claims arose at different times, out of different events, and involve different actors. Moreover, the recovery plaintiff seeks in each claim is different. Although a Jones Act claim by itself it not removable, it is removable if joined with a separate and independent claim that would be removable if sued upon alone. 28 U.S.C. § 1441(c). Accordingly, removal is proper.

Plaintiff's second claim involves a determination of the validity of the release agreement, and ultimately a decision must be made regarding what forum and what law must be used to make that decision. Article 227 of the Philippine Labor Code provides:

> A compromise settlement . . . voluntarily agreed upon by the parties with the assistance of the Bureau or the regional office of the Department of Labor, shall be final and binding upon the parties. The National Labor Relations Commission or any court shall not assume jurisdiction over issues involved therein except in case of non-compliance thereof or if there is *prima facie* evidence that the settlement was obtained through fraud, misrepresentation, or coercion.

Furthermore, the deposition of Jose S. Brillantes, the Labor Attache for the Philippine Embassy, and the statement of Maria Lourdes Cortez, a Senior Overseas Employment Officer for the POEA, indicate that the release would be considered approved by the POEA, and therefore binding. As defendants point out, plaintiff is, in essence, requesting a United States court to review the rules and regulations of a foreign government, and make a determination of their validity and application in this situation. Such a decision is properly made in a federal, rather than a state court. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964).

MINUTE ENTRY
March 11, 1991
SCHWATZ, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action No. 89-4036
C/W 89-4037

SECTION "A"

AQUAFAITH SHIPPING, LTD AND
SEVEN SEAS MARITIME, LTD.

Versus

EUFEMIA R. JARILLAS,
Individually, etc.

(Filed Mar. 14, 1991;
Date of Entry Mar. 14, 1991)

This matter is before the Court on the Motion of Aquafaith Shipping Ltd. and Seven Seas Maritime Ltd. for Summary Judgment or, alternatively, Motion for Forum Non Conveniens Dismissal in the above referenced matters. Docket No. 89-4036 is the movants' Complaint for Declaratory Relief, which action was consolidated with Docket No. 89-4037, the Petition for Damages of Eufemia R. Jarillas which the movants herein removed from the state court on September 11, 1989. The motions, set for hearing February 27, 1991, were taken under submission on briefs without oral argument at the request of the parties.

This consolidated matter arises from the death of seaman Leopoldo Jarillas. The decedent was a citizen and resident of the Philippines, as are his wife and children,

and was employed aboard the M/V ALFA, a Cyprus flag vessel, pursuant to a Philippine Overseas Employment Administration ("POEA")[1] contract which he executed in the Philippines on July 7, 1988. This contract expressly provided that the POEA and the Philippine Courts of Justice have exclusive jurisdiction over all disputes arising out of the employment relationship, which contract was filed with and approved by the POEA. Aquafaith Shipping Ltd. is a Cypriot corporation and owner of the M/V ALFA. Seven Seas Maritime Ltd. is a British corporation and the vessel operator's London agent. On November 16, 1988, the M/V ALFA was involved in a collision in the Baltic Sea. In the aftermath it was discovered that Leopoldo Jarillas was missing; his body was never found and he was presumed drowned. In January 1989, defendants' representative approached Mrs. Jarillas in the Philippines and advised her that they were prepared to settle any claims for the death of her husband for an amount greater than the compensation benefits required under POEA contract and the POEA rules and regulations. On January 9, 1989, Mrs. Jarillas, in the presence of her uncle, an attorney representing the defendants, and a senior officer of the POEA entered into a settlement for an amount of compensation 34% greater than that required under the POEA contract. As part of the settlement, Mrs. Jarillas, individually and as representative for her minor children, executed a release to the defendants from any further liability arising from the death of her husband, which release was

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[1] The POEA is a Phillipine government agency charged with overseeing the employment of Filipinos, including seamen, by foreign entities. The POEA establishes the compensation owed by an employer for the injury or death of a Filipino seaman, and is charges with advising and protecting the interests of their empolyees or their survivors. The POEA also reviews and approves the settlement of claims made by Filipino employees or their survivors against their employers.

witnessed by and Notarized additional personnel at the POEA. On August 30, 1989, Mrs. Jarillas, individually, as representative of her deceased husband's estate, and as Natural Tutrix of their minor children, filed a Petition for Damages and Writ of Attachment against the defendants and the M/ ALFA in the 29th Judicial District Court, Parish of St. Charles, State of Louisiana, asserting Jones Act negligence and unseaworthiness claims arising from the death of her husband. Specifically averred in this Petition is Mrs. Jarillas' claim that her execution of the January 9, 1989 settlement and release was obtained under duress, deception and/or coercion. Defendants then filed their Complaint for Declaratory Relief under 28 U.S.C. § 2201 (No. 89-3046) and removed the state court action to this Court (No. 89-3407) under 28 U.S.C. §§ 1331 and 1333 on September 11, 1989. Defendants move now for summary judgment on the effect of the settlement and release of January 9, 1989, or alternatively for *forum non conveniens* dismissal of this matter.

The primary issue in this matter is the validity of the settlement and release of January 9, 1989, and while neither of the parties dispute this fact—neither of the parties has submitted a memorandum of Philippine law relative to duress, undue influence, coercion, unequal bargaining power, and the avoidance of contracts generally. Following review of the parties' submissions, there is no question but that Philippine law governs that issue herein and, further, that this entire matter does not "belong" in this forum. *See Quintero v. Klaveness Ship Lines*, 914 F.2d 717, 722-23, *reh. and reh. en banc denied*, 920 F.2d 931 (5th Cir. 1990) (application of the Lauritzen-Rhoditis test places most significant weight on place of employment contract, domicile of worker, and provision for choice of law in contract, to determine law to be applied when other factors absent). Plaintiff, however, challenges the defendants' ability to raise the *forum non conveniens*

defense as an alternative at this time when defendants not only removed the plaintiff's state court Petition to this Court over a year and a half ago but filed a Complaint of their own under the Declaratory Judgment Act.

The Declaratory Judgment Act, 28 U.S.C. § 2201, confers no jurisdiction but is a procedural device designed to provide a new remedy in the federal court arsenal. *Mission Insurance Company v. Puritan Fashions Corporation*, 706 F.2d 599, 601 (5th Cir. 1983), citing *Aetna Life Insurance Company of Hartford, Conn v. Haworth*, 300 U.S. 227, 239-240, 57 S. Ct. 461, 463-464 (1937). As was stated by the Fifth Circuit in *Dresser Industries, Inc., v. Insurance Company of North America*, 358 F. Supp. 327, 330 (N.D. Tex.), *aff'd*, 475 F.2d 1402 (5th Cir. 1973), the Declaratory Judgment Act "gives the Court a choice, not a command." *Mission Insurance Company, supra*, at 601. The district court is not required to grant declaratory judgment relief, and it is a matter for the district court's sound discretion whether to decide a declaratory judgment action. *Id.*, citing *Brillhart v. Excess Insurance Company of America*, 316 U.S. 491, 62 S. Ct. 1163 (1942). In the instant case, defendants filed their Complaint for Declaratory Relief in order to ensure the removal of plaintiff's Petition from the state court. Louisiana state courts have refused to recognize the application of federal *forum non conveniens* law in maritime cases, *Markzannes v. Bermuda Star Lines, Inc.*, 545 So.2d 537 (La. 1989), *cert. denied*, —— U.S. ——, 110 S. Ct. 837 (1990), even though implored to do so by the Fifth Circuit. *Ikopentakis v. Thalassic Steamship Agency*, 915 F.2d 176 (5th Cir. 1990). To estopp defendants from asserting the federal *forum non conveniens* defense through the rationale that they have themselves chosen this forum would "blink at reality" and turn these foreign litigants into the kinds of "guinea pigs" for whom the Fifth Circuit expressed such concern in *Ikospentakis*. The convenience of the parties and witnesses has traditionally been considered in determining whether to hear a declaratory

judgment action, *Mission Insurance Company*, supra, at 602, citing *Amerada Petroleum Corp. v. Marshall*, 381 F.2d 661, 663-664 (5th Cir. 1967), *cert. denied*, 389 U.S. 1039, 88 S. Ct. 777 (1968), and the Fifth Circuit has adopted the same formulation of considerations normally applied in the *forum non conveniens* context. *Id.*, citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508, 67 S. Ct. 839, 843 (1947). *Forum non conveniens* is the equitable rule which gives this Court discretion to decline to exercise jurisdiction when the action could more appropriately be tried elsewhere. Even where jurisdiction is authorized by a venue statute, the Court may resist the imposition of its jurisdiction by use of this doctrine. *See generally Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507, 67 S. Ct. 839, 842 (1947); *Hotvedt v. Schlumberger Ltd. (N.V.)*, 914 F.2d 79, 81 (5th Cir 1990).

The status of the case when the *forum non conveniens* motion is decided is most significant in the resolution of the motion, and the Court must review the motion in light of the status of the case at the time the motion is filed. *In Re Air Crash Disaster Near New Orleans, La.*, 821 F.2d 1147, 1166 (5th Cir. 1987). Aside from meeting the burdens of showing an adequate and available forum for plaintiff and all the defendants, and that the private and public interests weigh more heavily in favor of trial in the foreign forum, a movant must also submit the motion in a timely manner. The rule of the Fifth Circuit is that a defendant assert a motion to dismiss for *forum non conveniens* within a reasonable time after the facts or circumstances which serve as the basis of the motion have developed and become known or reasonably knowable to the defendant. *Id.* at 1165, citing Wright, Miller & Cooper, *Federal Practice and Procedure*: *Jurisdiction* § 3828, at 291 (2d ed. 1986). This is tempered, however, by considerations of the non-movants conduct in preventing or obfuscating the possibility or availability of an otherwise timely motion for dismissal on these grounds. *See Ikospentakis*, supra, at 179-180.

The alleged untimeliness of Aquafaith's and Seven Seas' motion for *forum non conveniens* dismissal, coming a year and a half after removal of Mrs. Jarillas' Petition from the state court and their filing of a Complaint for Declaratory Relief, necessarily raises the question of dilatory conduct on the movants' part, as the purpose of the doctrine itself is to prevent the costs and inconvenience which this case has *already* incurred. However, the record reveals a lengthy litigation, beginning October 10, 1989, of Mrs. Jarillas' motion to remand her Petition to the Louisiana state court, where the *forum non conveniens* defense is not available; litigation of her motion for dismissal of defendants' action for declaratory relief also began on October 5, 1989. This Court's order of September 13, 1990 denying plaintiff's motion to remand (and motion to dismiss) was finalized with the Fifth Circuit's dismissal of plaintiff's appeal of the remand issue on November 14, 1990. Thus no "delay" can be charged to the defendants while this matter was progressing through an orderly district and appellate process on other issues.

No significant discovery has been taken in this matter, and the discovery which was taken was for purposes of opposing Mrs. Jarillas' motion to remand and motion to dismiss. In this case, *all the material witnesses* relative to the settlement and release at issue, including the plaintiff, reside in the Philippines. The underlying accident took place in the Baltic Sea, and neither Aquafaith, Seven Seas nor the vessel reside in the United States. The Court concludes that the law of the Philippines governs the decedent's employment contract and that the Philippine Courts of Justice provide the adequate and available alternate forum for determination of this matter.

Accordingly, for all the aforesaid reasons, IT IS ORDERED that the Motion of Aquafaith Shipping Ltd. and Seven Seas Maritime Ltd. for Summary Judgment in the above referenced matter is DENIED; Aquafaith's and Seven Seas' Motion for Forum Non Conveniens Dismissal should be and is hereby GRANTED, dismissing the above

referenced actions, with prejudice, conditioned upon Aquafaith and Seven Seas certifying in the record by March 29, 1991 that they will:

(1) Submit to service of process and jurisdiction in the appropriate forum in the Philippines;

(2) Formally waive in the proceeding in the Philippines any statute of limitations defense that has matured since the commencement of these actions in the American courts;

(3) Make available in the Philippine proceeding all relevant documents under their control and all relevant witnesses under their control relative to the execution of the settlement and release at issue;

(4) Make available in the Philippine proceeding all relevant documents under their control and all relevant witnesses who were their employees at the time of the underlying accident and who remain their employees at the time of trial of the matter;

(5) Agree that any depositions, answers to interrogatories, responses to requests for production of documents and admissions filed herein may be used in the Philippine proceeding to the same extent as if they originated there; and

(6) Formally agree in the Philippine proceeding to satisfy any final judgment rendered by such Court.

Should Aquafaith and Seven Seas fail to so certify by April 11, 1991, this Court will then consider their Motion as denied and this Court shall assume jurisdiction over the case. Upon timely receipt of such certification by Aquafaith and Seven Seas, the Clerk of Court is directed to enter a judgment in accordance herewith.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 91-3346

AQUAFAITH SHIPPING, LTD.,
and SEVEN SEAS MARITIME, LTD.
Plaintiffs-Appellees,

versus

EUFEMIA R. JARILLAS, Individually,
as personal representative of the
estate of LEOPOLDO L. JARILLAS, ETC.,
Defendant-Appellant

Appeal from the United States District Court
for the Eastern District of Louisiana

ON PETITION FOR REHEARING AND SUGGESTION
FOR REHEARING EN BANC

(Opinion June 24, 1992)

(Filed August 6, 1992)

Before POLITZ, Chief Judge, WILLIAMS and DUHE, Circuit Judges.

PER CURIAM:

(√) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service

on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ John M. Duhé, Jr.
United States Circuit Judge

NUMBER 35,757, DIVISION "E"
29TH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES
STATE OF LOUISIANA

EUFEMIA R. JARILLAS, INDIVIDUALLY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LEOPOLDO L. JARILLAS, AND AS NATURAL TUTRIX OF THE MINOR CHILDREN JANA LYNNE R. JARILLAS, DIORELLA MAE R. JARILLAS, AND JASON PAUL R. JARILLAS

versus

AQUAFAITH SHIPPING LTD. and
SEVEN SEAS MARITIME LTD.

(Filed: August 30, 1989
Lena C. Breaux Dy. Clerk)

PETITION FOR DAMAGES AND FOR WRIT OF ATTACHMENT

The Petition of EUFEMIA R. JARILLAS, Individually, as Personal Representative of the Estate of Leopoldo L. Jarillas, and as Natural Tutrix of the Minor Children Jana Lynne R. Jarillas, Diorella Mae R. Jarillas, of full age of majority and domiciled in and a resident of the Republic of the Philippines, respectfully represents:

1.

The following are made Defendants herein:

A. AQUAFAITH SHIPPING, LTD., on information and belief a corporation organized under the laws of the Country of Cyprus, with a principal place of

business at the offices of Seven Seas Maritime, Ltd., 12 A, Finsbury Square, London EC2A 1AS, United Kingdom, not licensed to do but doing business in the State of Louisiana, and alleged to have been at all times material herein the employer of the decedent and the owner/operator of the M/V ALFA; and

B. SEVEN SEAS MARITIME, LTD., on information and belief a corporation organized under the laws of the Country of Great Britain with a principal place of business at 12 A, Finsbury Square, London EC2A 1AS, United Kingdom, not licensed to do but doing business in the State of Louisiana, and alleged to have been at all times material herein the employer of the decedent and the owner/operator of the M/V ALFA.

2.

On or about November 16, 1988, Leopoldo Jarillas was serving as an able-bodied seaman and member of the crew of the M/V ALFA, and in said capacity was serving aboard the aforementioned vessel when he sustained severe injuries and death as a result of a collision between the M/V ALFA and a vessel by the name of the M/V SEADRIVE while en route from New Orleans, Louisiana to the Soviet Union.

3.

Petitioner avers on information and belief that the M/V ALFA was at all times relevant owned, managed and operated by Defendants Aquafaith Shipping, Ltd. and Seven Seas Maritime, Ltd., said Defendants being at all pertinent times the employer of the decedent.

4.

At all times material herein there was and still is in full force and effect an Act of Congress commonly known as the Jones Act (46 U.S.C. § 688) which Act is appli-

cable hereto in that Defendants were both guilty of acts of negligence as were other employees of Defendants and other members of the crew of the M/V ALFA, which acts of negligence proximately caused the injuries and death sustained by the decedent.

5.

Pursuant to the general maritime law of the United States, Defendants had the absolute duty to provide the decedent with a safe and seaworthy vessel, but said duty was breached and violated by these Defendants since the M/V ALFA was unseaworthy, and such unseaworthiness was a direct and proximate cause of the injuries and death sustained by the decedent.

6.

Petitioner is entitled to maintain this action in this Honorable Court pursuant to the Savings to Suitors Statute, 28 U.S.C. § 1333.

7.

The accident sued upon herein and resulting injuries and death sustained by the decedent were caused by the unseaworthiness of the aforementioned vessel and the negligence of the crew when senior officers of the vessel were not attending to their duties and/or in their proper stations, and neither yet was a watch properly posted nor was standard safety equipment employed to avert a collision at sea.

8.

At all times material herein Petitioner and the decedent were lawful man and wife, and the represented minor children herein were lawful issue of the marriage between Petitioner and the decedent, all to the end that Petitioner brings this action individually and in a representative capacity on behalf of the represented minors.

9.

As a result of the incident sued upon, the decedent suffered excruciating pain prior to his death by drowning with his body never being recovered, and Petitioner herein hereby asserts a claim for compensatory damages as are reasonable in the premises relative to the conscious pain and suffering of the decedent prior to his death, loss of nurture and guidance to the children as a result of the decedent's death, loss of consortium to Petitioner and the children as a result of the decedent's death, loss of services to the Petitioner and the children as a result of the decedent's death, loss of income, support and accumulated wealth to Petitioner and the children as a result of the decedent's death, the cost of memorial services, mental anguish and distress of Petitioner and the children as a result of the decedent's death, and loss of love and affection as a result of the decedent's death.

10.

On or about January 9, 1989, less than two months after the announcement of the decedent's death, at a time when Petitioner was unrepresented by counsel, in a state of financial distress and emotionally distraught, agents of Defendants presented to Petitioner what purported to be a full release of all causes of action against Defendants in consideration of a sum of money token in nature, to the end that Petitioner executed the documents presented without being aware of the import or nature of the documents and without having an opportunity to consult counsel.

11.

The aforementioned release signed by Petitioner was executed under duress, deception and/or coercion, was not executed freely, and was executed without a full understanding by Petitioner of her rights or benefit of counsel, and said release is and was from its inception patently void and unenforceable pursuant to the general maritime law of the United States of America.

12.

Petitioner is additionally entitled to recover from Defendants, in solido, punitive damages in a sum which, in the premises, will serve to punish Defendants and serve as an appropriate deterrent to Defendants' conduct in the future relative to the callous and wanton disregard of Defendants' obligation to furnish a seaworthy vessel and/or Defendants' overreaching in inducing Petitioner to sign an adhesion release in the weeks following her husband's death.

13.

Petitioner is informed, believes and therefore alleges that certain property of the Defendants, to-wit: The M/V ALFA, is and will be during the pendency of these proceedings within the navigable waters of the Parish of St. Charles, and Petitioner desires that a Writ of Attachment be issued in this action attaching the aforementioned property of Defendants to secure satisfaction of the Judgment to be obtained in favor of Petitioner herein pursuant to Article 3542 of the Louisiana Code of Civil Procedure.

14.

Both Defendants are non-residents with no duly appointed agent for service of process within this State within the meaning of Article 3541 of the Louisiana Code of Civil Procedure, and this Court should appoint an attorney at law to represent Defendants in this proceeding pursuant to Article 5091(1) of the Louisiana Code of Civil Procedure, on whom process may be served, and against whom this proceeding may be conducted contradictorily.

WHEREFORE, Petitioner prays that:

I. The Court appoint an attorney at law to represent the absent Defendants in this proceeding;

II. A Writ of Attachment issue herein on Petitioner's furnishing security as required by law, commanding the

Sheriff to seize and attach, according to law, the property of the Defendants within the jurisdiction of this Court sufficient to satisfy Petitioner's claims, and more particularly the M/V ALFA currently situated in the waters of the Parish of St. Charles, and to hold this property subject to further Order of this Court;

III. Citation and service of process be issued against the Defendants, and after due proceedings are had, there be judgment rendered herein in favor of Petitioner, EUFEMIA R. JARILLAS, Individually, as Personal Representative of the Estate of Leopoldo L. Jarillas, and as Natural Tutrix of the Minor Children Jana Lynne R. Jarillas, Diorella Mae R. Jarillas, and Jason Paul R. Jarillas and against Defendants AQUAFAITH SHIPPING, LTD. and SEVEN SEAS MARITIME, LTD., *in solido*, in a principal sum as compensatory damages and as punitive damages which are reasonable in the premises, with legal interest on all such damages from date of the loss herein, or, alternatively, from date of judicial demand, until paid, and for all costs of these proceedings; and

IV. The Writ of Attachment be maintained herein and the bond furnished by Petitioner cancelled, the property of Defendants be sold and Petitioner's claim paid with preference and priority out of the proceeds.

PAUL L. BILLINGSLEY
Attorney for Plaintiff

By: _____

PAUL L. BILLINGSLEY
Attorney at Law
Post Office Box 61
Luling, LA 70070
Telephone: (504) 785-8776
Bar Roll Number

By: _____

C. JOHN CASKEY
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By: _____

RICHARD J. DODSON
Attorney at Law
628 North Boulevard, Suite 100
Baton Rouge, LA 70802
Telephone: (504) 344-0633
Bar Roll Number 4982

NUMBER ———, DIVISION "—"
29TH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES
STATE OF LOUISIANA

EUFEMIA R. JARILLAS, INDIVIDUALLY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LEOPOLDO L. JARILLAS, AND AS NATURAL TUTRIX OF THE MINOR CHILDREN JANA LYNNE R. JARILLAS, DIORELLA MAE R. JARILLAS, AND JASON PAUL R. JARILLAS

versus

AQUAFAITH SHIPPING LTD. and
SEVEN SEAS MARITIME LTD.

VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, personally came and appeared C. JOHN CASKEY, who upon being duly sworn deposed and declared that he is an attorney for Petitioner named in the foregoing Petition; that he has read the same and that all of the allegations and facts contained therein are true and correct to the best of his knowledge, information and belief.

C. JOHN CASKEY

SWORN TO AND SUBSCRIBED before me, Notary Public, in my office in Baton Rouge, Louisiana, this 29th day of August, 1989.

Notary Public

NUMBER ————, DIVISION "—"
29TH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES
STATE OF LOUISIANA

EUFEMIA R. JARILLAS, INDIVIDUALLY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LEOPOLDO L. JARILLAS, AND AS NATURAL TUTRIX OF THE MINOR CHILDREN JANA LYNNE R. JARILLAS, DIORELLA MAE R. JARILLAS, AND JASON PAUL R. JARILLAS

versus

AQUAFAITH SHIPPING LTD. and
SEVEN SEAS MARITIME LTD.

ORDER

Considering the allegations of the verified Petition in this case:

IT IS ORDERED:

1. ————————————————, Esq., attorney at law, is appointed to represent the absent Defendants in this case, on whom the citation to the Defendants shall be served; and

2. A Writ of Attachment issue herein, as prayed for and according to law, on Petitioner's first furnishing security in the sum of $250.00 pursuant to Article 3544 of the Louisiana Code of Civil Procedure.

ORDER RENDERED AND SIGNED at ————————
————, Louisiana, on this — day of August, 1989.

29th Judicial District Court

NUMBER ———, DIVISION "—"
29TH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES
STATE OF LOUISIANA

EUFEMIA R. JARILLAS, INDIVIDUALLY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LEOPOLDO L. JARILLAS, AND AS NATURAL TUTRIX OF THE MINOR CHILDREN JANA LYNNE R. JARILLAS, DIORELLA MAE R. JARILLAS, AND JASON PAUL R. JARILLAS

versus

AQUAFAITH SHIPPING LTD. and
SEVEN SEAS MARITIME LTD.

WRIT OF ATTACHMENT

To: The Honorable Johnny Marino, Sheriff
St. Charles Parish, Louisiana

WHEREAS due process having been made before the Twenty-Ninth Judicial District Court in and for the Parish of St. Charles, Louisiana, by Eufemia R. Jarillas, Individually, as Personal Representative of the Estate of Leopoldo L. Jarillas, and as Natural Tutrix of the Minor Children Jana Lynne R. Jarillas, Diorella Mae R. Jarillas, and Jason Paul R. Jarillas, Petitioner in the above numbered and entitled proceedings, that Aquafaith Shipping, Ltd. and Seven Seas Maritime, Ltd., Defendants herein, are justly and truly indebted to Petitioner and that the said Aquafaith Shipping, Ltd. and Seven Seas Maritime, Ltd. are non-resident corporations with no duly appointed agent for service of process in this state;

NOW, THEREFORE, YOU ARE COMMANDED in the name of the State of Louisiana and the Twenty-Ninth

Judicial District Court in and for the Parish of St. Charles, State of Louisiana, to seize and attach according to law the M/V ALFA to satisfy said Writ and that you give notice thereof to the attorney at law appointed by the Court to represent the non-resident Defendant herein, and to make valid return of the Writ and endorse thereon the manner in which you have executed it.

By Order of the said Twenty-Ninth Judicial District Court, Parish of St. Charles, State of Louisiana.

_____

Clerk of Court

RECEIPT AND RELEASE

[POEA Workers Assistance Division Received by [*illegible*] Date 1/9/89]

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of TWO HUNDRED TWENTY THOUSAND PESOS AND 00/100 ONLY (P220,000.00), Philippine Currency, the receipt of which is hereby acknowledged to my full and complete satisfaction, broken down as follows:

For death compensation and burial benefits under POEA Standard Format (½) .. P170,000.00

Donation from Messrs. SEVEN SEAS MARITIME LTD. ..... P 50,000.00

Total amount to be received P220,000.00

I, EUFEMIA R. JARILLAS, of legal age and a resident of Lot 26 Block 12, Phase 2, Pacita Complex I, San Pedro Laguna, for myself being the surviving wife and sole allottee of Able Bodied Seaman (A.B) LEOPOLDO L. JARILLAS of the vessel M/V "ALFA" who was found missing after the vessel sufferred collission at Baltic Sea on 16th November 1988, do by these presents, hereby remise, release and forever discharge said vessel MV "ALFA", her Owners, managers, operators, charterers, agents, underwritters P and I Club and all parties at interest therein or thereon whether named or not named, including but nor limited to INTERORIENT MARITIME ENTERPRISES, INC., SEVEN SEAS MARITIME LTD. (AQUAFAITH SHIPPING CO., LTD.), from any and all claims, demands, debts, dues, liens, actions or causes of action at law or in equity, in common law or in admiralty, statutory or contractual, arising from and under the laws of Cyprus, the United Kingdom or the Republic of the Philippines and/or any other foreign country now held, owned or possessed by me, related to or concerning whether directly or indirectly, proximately or remotely, without being limited to but

including the disappearance and death of said A.B LEOPOLDO L. JARILLAS onboard said MV ALFA.

This instrument is a GENERAL RELEASE intended to release all liabilities of any character and/or claims or damages and/or losses and/or any other liabilities whatsoever, whether contractual or statutory, at common law or in equity, tortious or in admiralty, now or henceforth in any way related to or occuring as a consequence of the death of my said husband, including but not limited to all damages and/or losses constituting of loss of support, loss of earning capacity, loss of all benefits of whatsoever nature and extent incurred, physical pain and suffering and/or all damages and/or indemnities claimable in law, tort, contract, common law, equity and/or admiralty by me or by any person or persons pursuant to the laws of Cyprus, United Kingdom or the Republic of the Philippines and of all other countries whatsoever.

I hereby certify that I am of legal age and that I fully understand this instrument which was read to me in the local dialect and I agree that this is a FULL AND FINAL RELEASE AND DISCHARGE of all the parties and things referred to herein, and I further agree that this release may be pleaded as an absolute and final bar to any suit or suits or legal proceedings that may hereafter be prosecuted by me or by any one claiming by, through, or under me, against any of the persons or things referred to or related herein for any matter or thing referred to or related herein. I further certify and agree in my personal capacity that in case any other heir will claim from the parties hereinabove referred to or mentioned herein based on the same occurrence, I agree to give them whatever is due and will hold the parties hereinabove mentioned free and harmless from any and all liabilities whatsoever.

Questions and Answers:

1. Have you read this paper from beginning to end?

Answer: Yes

2. Do you know what this paper is that you are signing?

Answer: Yes

3. What is this paper that you are signing?

Answer: Receipt & Release

4. Do you know that signing this paper settles and ends every right or claim you may have for all damages/ losses, including but not limited to loss of earning capacity of the deceased, past and future maintenance, support, suffering, mental anguish, serious anxiety and similar injury?

Answer: Yes

5. Do you know that upon receipt of the above amount, you waive all claims you may have for damages/benefits against the vessel's Owners and her agents, insurers, charterers, operators, underwritters, P and I Club, shippers and all other persons in interest therein or thereon, under all the laws including the common law of Cyprus, United Kingdom or the Republic of the Philippines?

Answer: Yes

6. Did you in fact receive the amount of TWO HUNDRED TWENTY THOUSAND PESOS AND 00/100 ONLY (P220,000.00), Philippine Currency?

Answer: Yes

I further solemnly state and affirm that this Receipt and Release is not being made of any persuasive statement or representation by any one whomever and for any reason other than the payment and consideration stated herein and I agree that the money paid to me for this release is not an admission of liability.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of January in Pasig, Metro Manila, Philippines.

/s/ Eufemia R. Jarillas
EUFEMIA R. JARILLAS
(Wife)

in my own capacity and in representation of my minor children, namely Janalynne, Diorella Mae, Jason Paul & Joy Anne Marie

/s/ Rafael U. Macaspac
(Uncle)

SIGNED IN THE PRESENCE OF:

/s/ Ma. Lourdes M. Cortez
P.O.E.A. Sr. DEO
REPUBLIC OF THE PHILIPPINES
MUNICIPALITY OF PASIG
CITY OF MANILA [stamped] S.S.

ACKNOWLEDGEMENT

In the Municipality of Pasig, City of Manila (stamped) Metro Manila, Philippines, this 09 of Jan 1989, before me, a Notary Public, in and for the said municipality, personally appeared EUFEMIA R. JARILLAS, with Res. Cert. No. 1173245 issued at Q.C. on Nov/88, known to me to be the same person who executed the foregoing Receipt and Release and she acknowledged to me that she executed the same as her free and voluntary act and deed, after having the same fully explained to her and realizing the effects thereof, to be a full and final discharge and release of all the parties referred to therein, of all the matters and things dealt with in said instrument; that the same was executed and signed by her without any persuation, promis, threat, force, duress,

fraud or representation of any kind by any person whomsoever and that she understood the full contents thereof as well as the effects thereof.

WITNESS MY HAND AND NOTARIAL SEAL this 09 of Jan 1989 in the Municipality of Pasig, Metro, Manila, Philippines.

/s/ R. N. Aguilos
ATTY. RAFAEL N. AGUILOS
Notary Public
Until Dec. 31, 1989
PTR No. 564307
Issued: Jan. 2, 1989, Manila

Doc. No. 48
Page No. 78
Book No.
Series of 1989

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action 89-4037

Sect. L Mag. 2

EUFEMIA R. JARILLAS, INDIVIDUALLY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LEOPOLDO L. JARILLAS, AND AS NATURAL TUTRIX OF THE MINOR CHILDREN, JANA LYNNE R. JARILLAS, DIORELLA MAE R. JARILLAS, and JASON PAUL R. JARILLAS

versus

AQUAFAITH SHIPPING LTD. and
SEVEN SEAS MARITIME LTD.

PETITION FOR REMOVAL

[Filed September 11, 1989]

TO THE HONORABLE JUDGES
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

The Petition of Aquafaith Shipping Ltd. and Seven Seas Maritime Ltd. respectfully represents upon information and belief:

I.

On 30 August 1989, the petitioners received a Petition for Damages and Writ of Attachment, a copy of which is attached hereto, in an action entitled "Eufemia R. Jarillas, et al. v. Aquafaith Shipping Ltd. and Seven Seas Maritime Ltd., Suit No. 35-757, Division "E", in the Twenty-Ninth Judicial District Court for the Parish of St. Charles, State of Louisiana.

II.

The above-described action is a civil action over which this Court has original jurisdiction under the provisions of 28 U.S.C. 1331, in that this civil action asserts claims arising under the Constitution, laws and/or treaties of the United States. Therefore, pursuant to the provisions of 28 U.S.C. § 1441, this action is one which may be removed to the United States District Court for the Eastern District of Louisiana.

III.

Petitioners file herewith a bond for the good and sufficient surety on condition, as provided by 28 U.S.C. § 1446(d), that it will pay all costs and disbursements incurred by reason of the removal proceeding hereby brought should it be determined that this action was not removable or was improperly removed.

WHEREFORE, Petitioners, Aquafaith Shipping Ltd. and Seven Seas Maritime Ltd. pray that the above-entitled action now pending against it in the Twenty-Ninth Judicial District Court for the Parish of St. Charles, State of Louisiana, be removed therefrom to this Court.

Respectfully submitted,

CHAFFE, MCCALL, PHILLIPS,
TOLER & SARPY

By: /s/ Robert H. Murphy
ROBERT H. MURPHY—Bar No. 9850
PETER B. SLOSS—Bar No. 17142
2300 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163
Telephone: (504) 585-7000

Attorneys for defendants,
Aquafaith Shipping Ltd. and
Seven Seas Maritime Ltd.

CERTIFICATE OF SERVICE

I certify that the foregoing has been served on counsel of record by depositing same in the U.S. Mail, postage prepaid, this 11th day of September, 1989.

/s/ R. H. Murphy
ROBERT H. MURPHY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Civil Action 89-4036

Sect. A Mag. 1

AQUAFAITH SHIPPING LTD. and
SEVEN SEAS MARITIME LTD.

versus

EUFEMIA R. JARILLAS, INDIVIDUALLY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF LEOPOLDO L. JARILLAS, AND AS NATURAL TUTRIX OF THE MINOR CHILDREN, JANA LYNNE R. JARILLAS, DIORELLA MAE R. JARILLAS, and JASON PAUL R. JARILLAS

COMPLAINT FOR DECLARATORY RELIEF

[Filed September 11, 1989]

TO THE HONORABLE JUDGES
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA:

The Complaint of Aquafaith Shipping Ltd. and Seven Seas Maritime Ltd. against Eufemia R. Jarillas, Individually, as Personal Representative of the Estate of Leopoldo L. Jarillas, and as Natural Tutrix of the Minor Children, Jana Lynne R. Jarillas, Diorella Mae R. Jarillas, and Jason Paul R. Jarillas, in a cause of action for declaratory relief, alleges upon information and belief, as follows:

I.

Plaintiff Aquafaith Shipping Ltd. ("Aquafaith") was and is a legal entity duly organized and existing pursuant to the laws of the Country of Cyprus.

II.

Plaintiff Seven Seas Maritime Ltd. ("Seven Seas") was and is a legal entity duly organized and existing pursuant to the laws of the United Kingdom.

III.

At all times pertinent hereto, defendant Eufemia R. Jarillas was and is a citizen of The Republic of The Philippines, and was domiciled in that nation.

IV.

This is a civil action over which this court has original jurisdiction under the provisions of 28 USC § 1331, in that this civil action involves claims arising under the Constitution, laws and/or treaties of the United States.

V.

This also is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and this Court has jurisdiction pursuant to 28 U.S.C. § 1333.

VI.

This is an action for Declaratory Judgment pursuant to 28 U.S.C. § 2201, for the purpose of determining a question of actual controversy between the parties, as hereinafter more fully appears.

VII.

Plaintiff Aquafaith is the owner of the M/V ALFA, an oceangoing bulk carrier, and Seven Seas is a managing agent for Aquafaith.

VIII.

Leopoldo J. Jarillas was employed as a seaman aboard the M/V ALFA pursuant to an employment contract

signed by Jarillas in the Republic of the Philippines, which contract was processed and approved by The Philippine Overseas Employment Administration ("POEA"), the official Philippine governmental authority which sets the rules and regulations applicable to the employment of all Philippine seamen.

IX.

On or about 16 November 1989, while the M/V ALFA was on the High Seas in the Baltic Sea, she was involved in a collision. As a result of the collision Leopoldo L. Jarillas disappeared and is presumed drowned.

X.

On January 9, 1989, defendant Eufemia R. Jarillas, the wife of Leopoldo L. Jarillas, entered into an agreement with plaintiffs in the Republic of The Philippines whereby Eufemia R. Jarillas, individually, and as representative of her minor children, and accepted the sum of 220,000 Philippine PESOS in settlement of all claims against the M/V ALFA and plaintiffs arising from her husband's death.

XI.

In connection with the settlement agreement referred to in Paragraph X, Eufemia R. Jarillas, individually, and as representative of her minor children, identified to be Jana Lynne Jarillas, Diorella Mae Jarillas, Jason Paul Jarillas and Anne Marie Jarillas executed a receipt and release which was duly witnessed and notarized. (A copy of the receipt and release is attached hereto as Exhibit "1").

XII.

The Receipt and Release referred to in Paragraphs X and XI was voluntarily agreed upon by the parties in the presence of a representative of the Philippine Overseas Employment Administration and the executed Receipt and Release was filed with the POEA. According to Philippine law, as set forth in Article 227 of the Labor

Code of the Philippines, this compromise settlement is final and binding upon the parties. (Copy of Art. 227 of the Labor Code of the Philippines is attached as Exhibit "2").

XIII.

Pursuant to the rules and regulations of the POEA, the POEA has original and exclusive jurisdiction over all disputes arising out of POEA approved contracts, such as the contract between Leopoldo L. Jarillas and plaintiffs and, more specifically, any claims for death or disability arising during employment.

XIV.

In August 1989, defendant Eufemia R. Jarillas, individually, and as personal representative of the Estate of Leopoldo L. Jarillas, and as Natural Tutrix of the minor children Jana Lynne R. Jarillas, Diorella Mae R. Jarillas, and Jason Paul R. Jarillas filed suit against plaintiffs Aquafaith and Seven Seas in the Twenty-Ninth Judicial District Court, for the Parish of St. Charles, in the State of Louisiana. In the petition, it is alleged that the above-referenced release was executed by defendant Eufemia R. Jarillas under duress, deception and/or coercion, was not executed freely and was executed without a full understanding of her rights and, further alleges that said release is unenforceable, and praying for the attachment of the M/V ALFA in St. Charles Parish. This lawsuit had not been served on Aquafaith or Seven Seas at the time this Declaratory Judgment was filed. However, a writ of attachment of the M/V ALFA has been issued in the 29th Judicial District Court and will be effected when the vessel berths in that parish to load cargo on or about September 12, 1989.

XV.

Plaintiffs aver that Receipt and Release executed in the Republic of The Philippines in the presence of the

POEA and on file with the POEA is a valid, final and binding agreement between the parties which is enforceable under the laws of the Republic of the Philippines and/or, alternatively, under laws of any country.

XVI.

Plaintiffs maintain that the law of the Republic of the Philippines is the proper law to govern this dispute and determine the validity and enforceability of the Receipt and Release executed by the defendant.

XVII.

Plaintiffs maintain that said Receipt and Release is an absolute bar to any claim for damages by defendant as a result of her husband's death.

XVIII.

Plaintiffs maintain that defendant has no right of action or cause of action under the Jones Act and/or the General Maritime Law of the United States arising from her husband's death.

XIX.

Plaintiffs maintain that this is a case which is governed exclusively by the law of the Republic of the Philippines and that the POEA has original and exclusive jurisdiction over all disputes between these parties. However, because of the Louisiana State Court action filed, but not yet served, by defendant asserting entitlement to the benefits of United States Law, and because of the threat that the M/V ALFA will be attached in Louisiana State Court in the 29th Judicial District Court for the Parish of St. Charles pursuant to the writ of attachment that has already been issued, Plaintiffs have been compelled to file this Declaratory Judgment suit in the United States District Court for the Eastern District of Louisiana.

WHEREFORE, plaintiffs pray that defendant Eufemia R. Jarillas be served via certified mail, return receipt requested. and through her attorneys in the State of Louisiana, Richard J. Dodson, Paul W. Billingsly, C. John Caskey, with a copy of this Complaint for Declaratory Judgment, together with a summons to appear and answer under oath, and that this Court adjudge and decree pursuant to its authority under 28 USC § 2201:

1. That Philippine law governs this dispute;

2. That the POEA has the exclusive jurisdiction and is the appropriate forum to resolve this dispute;

3. That Philippine law and, in particular, Article 227 of the Labor Code of the Philippines, requires a finding that the Receipt and Release is valid, final and binding upon the parties;

4. That the forum selection clause and choice of law provisions of the POEA rules and regulations and Leopoldo L. Jarillas' POEA approved employment contract are valid and enforceable;

5. Alternatively, that the Receipt and Release executed by Eufemia R. Jarillas is a valid, final and binding agreement between the parties;

6. That defendant has no cause of action under the Jones Act and/or the General Maritime Law of the United States; and

7. That plaintiffs have such other and further relief in the premises as they may be entitled to receive.

CHAFFE, MCCALL, PHILLIPS,
TOLER & SARPY

By: /s/ Robert H. Murphy
ROBERT H. MURPHY—Bar No. 9850
PETER B. SLOSS—Bar No. 17142
JOHN N. CRITCHLOW—Bar No. 17539

2300 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163
Telephone: (504) 585-7000

Attorneys for plaintiffs,
Aquafaith Shipping Ltd. and
Seven Seas Maritime Ltd.

[SEAL]

EMBASSY OF THE
UNITED STATES OF AMERICA
MANILA, PHILIPPINES

Republic of the Philippines)
City of Manila) ss:
Embassy of the United States of America)

I, Gloria M. Jordan, Vice Consul of the United States of America at Manila, Philippines, duly commissioned and qualified, do hereby certify that

** Juanito P. Vitangcol **

whose true signature and official seal are, respectively, subscribed and affixed to the foregoing (annexed) certificate (document), was on the 31st day of October, 1989, the date thereof, Notary Public for and within the City of Manila, Republic of the Philippines duly commissioned and qualified, as to whose official acts, faith and credit are due.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the American Consular Services at Manila, Philippines, this 31st day of October, 1989

/s/ Gloria M. Jordan
GLORIA M. JORDAN
Vice Consul of the
United States of America

MNL: PS/6
Feb 1982

PHILIPPINE
OVERSEAS
EMPLOYMENT
ADMINISTRATION

Republic of the Philippines
Department of Labor & Employment
POEA Bldg., Ortigas Avenue cor. EDSA,
Mandaluyong, 1501 Metro Manila
P.O. Box 4061/Telex: 42472 POEA PM
Tel.: 722-1142 to 99

30 October 1989

PANDIMAN PHILIPPINES, INC.
3rd Floor Phil. Veterans Bank Bldg.
General Luna St., Intramuros
1002 METRO MANILA

Gentlemen:

This has reference to the letter of Chaffe, McCall, Phillipps, Toler & Sarpy dated 25 October 1989 relative to the civil action filed by Eufemia Jarillas in the United States District Court, Eastern District of Louisiana on the death of her husband, A/B Leopoldo Jarillas and requesting the confirmation by this Administration of the telex sent on 31 August 1989.

We hereby confirm the said telex message and in support of your position, please be further informed of the following:

1. The death compensation of A/B Leopoldo Jarillas of P170,000.00 in accordance with the POEA Standard Employment Contract plus owner's donation of P50,000.00 was paid to the surviving spouse Eufemia Jarillas on 09 January 1989 before Ma. Lourdes M. Cortez, Sr. Overseas Employment Officer, Welfare & Employment Office (WEO), POEA. The copy of the worldwide receipt and release exe-

cuted by Mrs. Eufemia Jarillas is on file with this Administration.

2. It is one of the functions of the WEO to conciliate claims of seamen or any other overseas contract workers or their beneficiaries against the employers or their agents. Any settlement agreed upon before said Office, as long as the terms and conditions thereof are over and above the provisions of the POEA Standard Employment Contract, and not contrary to laws, morals and public policy, is valid and binding. As far as this Administration is concerned, the settlement of the case of A/B Jarillas before the WEO is considered closed and terminated.

3. Executive Order No. 247 entitled "Reorganizing the Philippine Overseas Employment Administration and For Other Purposes" promulgated on 24 July 1987 provides that the POEA shall "*exercise original and exclusive jurisdiction to hear and decide all claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas employment x x x.*" Under Section 2, Rule I, Book VII of the POEA Rules and Regulations Governing Overseas Employment, the Administration is mandated to "*x x x provide the worker and his family all assistance they may need in the enforcement of the contractual obligations by agencies or entities and/or by their principals x x x.*" Further, Section H of the POEA Standard Employment Contract provides:

"*a. All rights and obligations of the parties to this Contract, including the annexes thereof, shall be governed by the laws of the Republic of the Philippines, international conventions, treaties and covenants wherein the Philippines is a signatory.*

b. The Philippine Overseas Employment Administration shall have original and exclusive juris-

diction over any and all disputes or controversies arising out of or by virtue of this Contract."

Enclosed are photocopies of Executive Order No. 247 and the telex message dated 31 August 1989.

We hope to have been of assistance to you.

Very truly yours,

/s/ Crescencio M. Siddayao
CRESCENCIO M. SIDDAYAO
Deputy Administrator
for
Employment and Welfare

REPUBLIC OF THE PHILIPPINES)
) S.S.
CITY OF MANILA)

SUBSCRIBED AND SWORN to before me: Affiant exhibited to me his Res. Cert. No: 43322456H issed at Manila on January 9, 1989.

[JUANITO P. VITANGCOL
Notary Public
Until Dec. 31, 1989
PTR No. 564584
Manila 1/3/89]

MSG 176-S[TLX]

18:07 AUG.31.89

PTS
19+
23092

ETPI MNL INFO PN
CHAFFE, MCALL, PHILLIPS, TOLER N SARY
LAW OFFICES
460122 VIA WORLDCOM
58335 VIA WESTERN UNION

A/B CMPTS
ATTN: ATTY BOB MURPHY

RE: MV ALFA
CLAIM OF EUFEMIA JARILLAS/DEATH OF
AB LEOPOLDO JARILLAS

THIS IS PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA)

RELATIVE TO THE ABOVE SUBJECT, PLS BE INFORMED OF THE FF:

1) DEATH COMPENSATION OF AB LEOPOLDO JARAILLAS OF P170,000.00 PER POEA STANDARD FORMAT CONTRACT PLUS OWNER'S DONATION OF P50,000.00 WAS PAID TO SURVIVING SPOUSE EUFEMIA JARILLAS BEFORE POEA WELFARE OFFICER ON 9 JANUARY 1989 STOP COPY OF WORLDWIDE RECEIPT AND RELEASE EXECUTED BY WIDOW ON FILE AT POEA.

2) PURSUANT TO SAID SETTLEMENT CASE OF AB JARILLAS' DEATH COMPENSATION CONSIDERED TERMINATED.

3) BASED ON PAR. 2 SEC. H OF POEA STANDARD FORMAT CONTRACT, POEA HAS ORIGINAL AND EXCLUSIVE JURISDICTION OVER ALL DISPUTES ARISING OUT OF POEA-APPROVED CONTRACT

FOR YOUR INFORMATION AND GUIDANCE

TKS N RGDS

ADM. ACHACOSO/D.A. SIDDAYAO
POEA MANILA
ETPI MNL INFO PN
64035 POEA PN 1

AAD 000.0 MINS
TIME 08/31 1819

MALACAGUNG
MANILA

EXECUTIVE ORDER NO. 247

REORGANIZING THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION AND FOR OTHER PURPOSES

WHEREAS, Executive Order No. 5 (1986), provides that the necessary and proper changes in the organizational and functional structures of the government, its agencies and instrumentalities need to be effected to promote efficiency and effectiveness in the delivery of public services;

WHEREAS, it has become necessary to institute changes in the functional structure of the Philippine Overseas Employment Administration in order to enhance its effectiveness in responding to changing market and economic conditions and to the call of the national development plan for the strengthening of the worker protection and regulation components of the overseas employment program; and,

WHEREAS, the Philippine Overseas Employment Administration has to systematize its operations by rationalizing its functions, structure and organization to make it more efficient in undertaking its principal function of formulating and implementing a systematic program for promoting and monitoring the overseas employment of Filipino workers and for protecting their rights to fair and equitable employment practices, and in order that it may respond more effectively to the new demands for more meaningful welfare services to workers, better protection of their rights, more efficient adjudication of cases and more efficient manpower delivery system.

NOW, THEREFORE, I CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in

me by the sovereign will of the Filipino people and the Constitution, do hereby order:

Section 1. *Title.* This Executive Order shall otherwise be known as the Reorganization Act of the Philippine Overseas Employment Administration.

Section 2. *Reorganization.* The Philippine Overseas Employment Administration, hereinafter referred to as the Administration is hereby reorganized, structurally and functionally in accordance with the provisions of the Executive Order.

Section 3. *Powers and Functions.* To the pursuit of its mandates, the Administration shall have the following powers and functions:

(a) Regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system;

(b) Formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements;

(c) Protect the rights of Filipino workers for overseas employment to fair and equitable recruitment and employment practices and ensure their welfare;

(d) Exercise original and exclusive jurisdiction to hear and decide all claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas employment including the disciplinary cases; and all pre-employment cases which are administrative in character involving or arising out of violation of requirement laws,

rules and regulations including money claims arising therefrom, or violation of the conditions for issuance of license or authority to recruit workers.

All prohibited recruitment activities and practices which are penal in character as enumerated and defined under and by virtue of existing laws, shall be prosecuted in the regular courts in close coordination with the appropriate Departments and agencies concerned;

(e) Maintain a registry of skills for overseas placement;

(f) Recruit and place workers to service the requirements for trained and competent Filipino workers by foreign governments and their instrumentalities and such other employers as public interest may require;

(g) Promote the development of skills and careful selection of Filipino workers for overseas employment;

(h) Undertake overseas market development activities for placement of Filipino workers;

(i) Secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith;

(j) Promote and protect the well-being of Filipino workers overseas;

(k) Develop and implement programs for the effective monitoring of returning contract workers, promoting their re-training and re-employment or their smooth re-integration into the mainstream of national economy in coordination with other government agencies;

(l) Institute a system for ensuring fair and speedy disposition of cases involving violation of recruitment rules and regulations as well as violation of terms and conditions of overseas employment;

(m) Establish a system for speedy and efficient enforcement of decisions laid down through the exercise of its adjudicatory function;

(n) Establish and maintain close relationship and enter into joint projects with the Department of Foreign Affairs, Philippine Tourism Authority, Manila International Airport Authority, Department of Justice, Department of Budget and Management and other relevant government entities, in the pursuit of its objectives. The Administration shall also establish and maintain joint projects with private organizations, domestic or foreign, in the furtherance of its objectives.

Section 4. *Structural Organization.* The Administration shall consist of the Governing Board, the Office of the Administrator, the offices of such number of Deputy Administrators as may be necessary, Office of the Director for each of the principal subdivisions of its internal structure.

(a) The Governing Board shall be composed of the Secretary of Labor and Employment as Chairman, the Administrator and a third member, considered well-versed in the field of overseas employment who shall be appointed by the President to serve for a term of two (2) years;

(b) The Administrator and such Deputy Administor and Directors as may be necessary shall be appointed by the President upon recommendation of the Secretary;

(c) The functional structure of the Administration shall be established along the areas of: market development, employment, welfare, licensing, regulation and adjudication. Each of the principal substantive subdivisions of the Administration shall be headed by a Director and shall have such departments and units as may be necessary.

Section 5. *Regional Extension Units.* The Administration is hereby authorized to set up regional extension units in such regions as the Governing Board may determine to be necessary to promote efficient and economic delivery of its services. The regional extension units shall be under the administrative supervision of the Labor Regional Director. It shall have, among others, the following functions:

(a) Execute the policies, plans and programs of the Administration in the regions outside of the Metro Manila area;

(b) Coordinate with local government officials on the matter of implementation of the Administration's program on overseas employment;

(c) Advise the central office on the needs of the region for particular welfare and regulatory programs;

(d) Establish linkages with other allied government agencies in the pursuance of the objectives of the overseas employment program;

(e) Coordinate the anti-illegal recruitment campaign in the region;

(f) Perform other functions as the Administration may deem necessary.

Section 6. *New Structure and Pattern.* Upon approval of this Executive Order, the officers and employees of the Philippine Overseas Employment Administration shall, in

a hold over capacity, continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from the service. The new structure and staffing pattern for the Philippine Overseas Employment Administration shall be approved and prescribed by the Secretary of the Department of Labor and Employment, within one hundred twenty (120) days from the approval of this Executive Order and the authorized positions created thereunder shall be filled with regular appointments by the Secretary of the Department of Labor and Employment or the President as the case may be. Those incumbents whose positions are not included therein or who are not reappointed shall be deemed separated from the service. Those separated from the service shall receive the retirement benefits to which they may be entitled under existing laws, rules and regulations. Otherwise they shall be paid the equivalent of one-month salary for every year of service, or fraction thereof, computed on the basis of the highest salary received, but in no case shall such payment exceed the equivalent of twelve (12) months salary.

Section 7. *Prohibition Against the Organizational Change.* No change in the reorganization herein prescribed shall be valid except upon approval of the President for the purpose of promoting efficiency and effectiveness in the delivery of public service.

Section 8. Funding. Funds needed to carry out the provisions of this Executive Order shall be taken from funds available in the Administration.

Section 9. *Implementing Authority of Secretary.* The Secretary shall issue such rules, regulations and other issuances as may be necessary to ensure the effective implementation of the provisions of this Executive Order.

Section 10. *Separability Clause.* Any portion or provision of this Executive Order that may be declared un-

constitutional shall not have the effect of nullifying other portions or provisions that can still subsist and be given effect in their entirety.

Section 11. *Repealing Clause.* All laws, ordinances, rules, regulations, other issuances or parts thereof, which are inconsistent with this Executive Order are hereby repealed or modified accordingly.

Section 12. *Effectivity.* This Executive Order shall take effect immediately.

APPROVED in the City of Manila, Philippines, this 24th day of July, in the Year of Our Lord, Nineteen Hundred and Eighty-Seven.

(Sgd.) CORAZON C. AQUINO
President of the Philippines

By the President:

(Sgd.) JOKER P. ARROYO
Executive Secretary

UNITED STATES CONSTITUTION

U.S. Const. art. I, § 8, Cl. 1.

The Congress shall have Power . . .

§ 8, Cl. 3.

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

§ 8, Cl. 10.

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

U.S. Const. art. III, § 2, Cl. 1.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. Const. art. VI, cl. 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

FEDERAL STATUTES INVOLVED

28 U.S.C. § 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

(As amended July 25, 1958, Pub.L. 85-554, § 1, 72 Stat. 415; Oct. 21, 1976, Pub.L. 94-574, § 2, 90 Stat. 2721; Dec. 1, 1980, Pub. L. 96-486, § 2(a) 94 Stat. 2369.)

28 U.S.C. § 1333. Admiralty, maritime and prize cases

The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize.

(As amended May 24, 1949, c. 139, § 79, 63 Stat. 101.)

28 U.S.C. § 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United

States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which state law predominates.

(As amended Oct. 21, 1976, Pub.L. 94-583, § 6, 90 Stat. 2898; June 19, 1986, Pub.L. 99-336, § 3(a), 100 Stat. 637; Nov. 19, 1988, Pub.L. 100-702, Title X, § 1016(a), 102 Stat. 4669; Dec. 1, 1990, Pub.L. 101-650 Title III, § 312, 104 Stat. 5114.)

28 U.S.C. § 2201. Creation of remedy

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of Canadian merchandise, as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act.

(As amended May 24, 1949, c. 139, § 111, 63 Stat. 105; Aug. 28, 1954, c. 1033, 68 Stat. 890; July 7 1958, Pub.L. 85-508, § 12(p), 72 Stat. 349; Oct. 4, 1976, Pub.L. 94-455, Title XIII, § 1306(b)(8), 90 Stat. 1719; Nov. 6, 1978, Pub.L. 95-598, Title II, § 249, 92 Stat. 2672; Sept. 24, 1984, Pub.L. 98-417, Title I, § 106, 98 Stat. 1597; Sept. 28, 1988, Pub.L. 100-449, Title IV, § 402(c), 102 Stat. 1584; Nov. 16, 1988, Pub.L. 100-670, Title I, § 107(b), 102 Stat. 3984.)

28 U.S.C. § 2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

STATE STATUTE INVOLVED

Louisiana Code of Civil Procedure, Art. 123. Forum non conveniens

A. For the convenience of the parties and the witnesses, in the interest of justice, a district court upon contraditory motion, or upon the court's own motion after contradictory hearing, may transfer a civil case to another district court where it might have been brought; however, no suit brought in the parish in which the plaintiff is domiciled, and in a court which is otherwise a court of competent jurisdiction and proper venue, shall be transferred to any other court pursuant to this Article.

B. Except as provided in Paragraph C, upon the contradictory motion of any defendant in a civil case filed in a district court of this state in which a claim or cause of action is predicated solely upon a federal statute and is based upon acts or omissions originating outside of this state, when it is shown that there exists a more appropriate forum outside of this state, taking into account the location where the acts giving rise to the action occurred, the convenience of the parties and witnesses, and the interest of justice, the court may dismiss the suit without prejudice; however, no suit in which the plaintiff is domiciled in this state, and which is brought in a court which is otherwise a court of competent jurisdiction and proper venue, shall be dismissed pursuant to this Article. In the interest of justice, and before the rendition of the judgment of dismissal, the court shall require the defendant or defendants to file with the court a waiver of any defense based upon prescription, provided that a suit on the same cause of action is commenced in a court of competent jurisdiction within sixty days from the rendition of the judgment of dismissal.

C. The provisions of Paragraph B shall not apply to claims brought pursuant to 46 USC § 688 or federal maritime law.

Added by Acts 1970, No. 294, § 1. Amended by Acts 1988, No. 818, § 1, eff. July 18, 1988.